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ABSTRACT

This document presents New Hampshire's standards for the education of students with disabilities. Individual chapters present standards on: definitions; Child Find; reporting requirements of local education agencies; evaluation and determination of educational disabilities; the Individualized Education program; extended school year programming; vocational education for students with disabilities; placement of students with educational disabilities; participation of private school students who are placed in private schools by parents without the cooperation of a local education agency; requirements for the development and operation of programs for students with educational disabilities; surrogate parents; confidentiality of information; procedural safeguards; complaint procedures; administrative due process hearing procedure; State Department of Education monitoring of educational services and programs for students with educational disabilities; education of children placed in homes for children, health care facilities, or state institutions; State Department of Education enforcement; standards for approval of private facilities and other non-district programs; rate setting; severability; provision of educational services to students with educational disabilities committed to the Youth Development Center by court order; and students with educational disabilities in placements for which the Division of Children, Youth, and Families has financial responsibility. (DB)

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ED 417 518

NEW HAMPSHIRE STANDARDS FOR THE EDUCATION OF STUDENTS WITH DISABILITIES

Adopted October 21, 1996

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NOTE TO THE READER

This edition of the *New Hampshire Standards for the Education of Students with Disabilities* has been prepared as a reference for parents and educators. As such, it has been formatted to make it easy to use. IT IS NOT, NOR IS IT INTENDED TO BE, AN EXACT COPY OF THE OFFICIAL LEGISLATIVE DOCUMENT CONTAINING THESE RULES. This version differs from the official version in the following ways:

- A standard literary outline format (indentation sequence) has been substituted for the legislative outline format used for regulatory material; all numbers and letters remain the same, however.
- Proper names have been capitalized, for example: Department of Education, Youth Development Center, U.S. Secretary of Education.
- Chapters which contain no text but which have been "reserved" for future use are not listed.
- Legislative source notes have been omitted.
- In order to avoid confusion with local Special Education Evaluation/Placement Teams, references to the Special Education Team at the New Hampshire Department of Education (which was known as the "Special Education Bureau" prior to departmental reorganization) are made as follows:

  (New Hampshire Department of Education) Special Education Team.

  The phrase "(New Hampshire Department of Education)" is not part of the legislative text.

Persons who have a specific need for any of this material in its original format may call the Department of Education at (603) 271-3189 to make arrangements to obtain it.

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CHAPTER ED 1100
STANDARDS FOR THE EDUCATION OF STUDENTS WITH DISABILITIES

Ed 1101 PURPOSE AND SCOPE

Ed 1101.01 **PURPOSE.** It is the intent of these rules, adopted by the board of education, to insure that students with educational disabilities are provided with a free appropriate public education pursuant to 34 CFR Part 300.

Ed 1101.02 **SCOPE.** These rules only apply to programs that receive public funds. Nothing in these rules shall limit the applicability of RSA 186-C:17 which states that "nothing in this chapter shall be construed as authorizing any public official, agent, or representative, in carrying out any of the provisions of this chapter to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child except pursuant to a proper court order."

CHAPTER Ed 1102
DEFINITIONS

Ed 1102.01 "Approved program" means a program of special education that has been approved by the State Board of Education and that is maintained by a school district, regional special education center, private organization, or state institution for the benefit of students with educational disabilities and may include a home-based program.

Ed 1102.02 "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of students with educational disabilities.

Ed 1102.03 "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device and includes:

(a) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with educational disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and

(f) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with educational disabilities.

Ed 1102.04 "At no cost" means that all specifically designed instruction is provided without charge to parents but does not preclude incidental fees which are normally charged to students who do not have disabilities or their parents as part of the regular education program.

Ed 1102.05 "Committed juvenile with disabilities" means an individual who is committed to the Youth Development Center pursuant to court order and who has been or is determined to be a student with an educational disability, as defined by Ed 1102.31.

Ed 1102.06 "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

Ed 1102.07 "Court" means the district or municipal court unless otherwise indicated.

Ed 1102.08 "Curriculum" means all of the courses and other educational opportunities offered by a school or school district.

Ed 1102.09 "Days" means calendar days.

Ed 1102.10 "Educational decision making process" means "educational decision making process" as defined in RSA 186-C:14 II(b), namely, the "identification, evaluation, and placement, as well as the hearing, mediation, and appeal procedures."

Ed 1102.11 "Educationally related services" means "educationally related services" as defined in RSA 186-C:2 V, namely "transportation and such developmental, corrective, and other supportive services as are required by an individualized education program to assist an educationally disabled child to benefit from special education," and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. Consistent with 34 CFR 300.16, the terms used in this definition are defined as follows:

(a) "Audiology" includes —

(1) Identification of students with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading or lip reading;

(4) Creation and administration of programs for prevention of hearing loss;

(5) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(6) Determination of the child's need for group and individual amplification, selecting and filling an appropriate aid, and evaluating the effectiveness of amplification.

(b) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(c) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(d) "Medical services" means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and educationally related services.

(e) "Occupational therapy" includes:

(1) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(2) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(3) Preventing, through early intervention, initial or further impairment or loss of function.

(f) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(g) "Physical therapy" means services prescribed by a physician and provided by a qualified physical therapist.

(h) "Psychological services" includes:

(1) Administering psychological and educational tests, and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;

(4) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(i) "Recreation" includes:

(1) Assessment of leisure function;

(2) Therapeutic recreation services;

(3) Recreation programs in schools and community agencies; and

(4) Leisure education.

(j) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(k) "School health services" means services provided by a qualified school nurse or other qualified person.

(l) "Social work services in schools" includes:

(1) Preparing a social or developmental history on a student with a disability;

(2) Group and individual counseling with the student and family;

(3) Working with those problems in a student's living situation including the home, school, and community that affect the student's adjustment in school; and

(4) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her education program.

(m) "Speech pathology" includes:

(1) Identification of students with speech or language impairments;

(2) Diagnosis and appraisal of specific speech or language impairments;

(3) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) Provision of speech and language services for habilitation or prevention of communicative impairments; and

(5) Counseling and guidance of parents, students, and teachers regarding speech and language impairments.

(n) "Transportation" includes:

(1) Travel to and from school and between schools;

(2) Travel in and around school buildings; and

(3) Specialized equipment such as, but not limited to, special or adapted buses, lifts, and ramps, if required to provide special transportation for a student with a disability.

(o) "Other supportive services" means other developmental, corrective, or supportive services such as, but not limited to, orientation and mobility services, low vision services and interpreting services if they are required to assist a student with educational disabilities to benefit from special education.

Ed 1102.12 "Evaluation" means procedures used in accordance with Ed 1107 to determine whether a student has an educational disability and the nature and extent of the special education and educationally related services that the student needs. The term means procedures used selectively with an individual and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

Ed 1102.13 "Free appropriate public education", consistent with 34 CFR 300.8, means special education and educationally related services which are provided at public expense under public supervision and direction and without charge to the parent that:

(a) Meet the requirements of the Department of Education as prescribed in Chapter Ed 1100 also commonly known as New Hampshire Standards for the Education of Students with Disabilities;

(b) Include preschool, elementary school or secondary school education; and

(c) Are provided in conformity with an individualized education program which meets the requirements of Ed 1109.

Ed 1102.14 "Health care facility" means any hospital, nursing home, sheltered home or other institution licensed under RSA 151.

Ed 1102.15 "Home for children" means any orphanage, institution for the care, treatment, or custody of children, childcare agency as defined by RSA 170-E or any residential school approved under RSA 186:11, XXIX.

Ed 1102.16 "IDEA" means Public Law 101-476, Individuals with Disabilities Education Act.

Ed 1102.17 "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

Ed 1102.18 "Individualized education program" means "individualized education plan as defined in RSA 186-C:2 III, namely "a written plan for the education of an educationally disabled child that has been developed by a school district in accordance with rules adopted by the State Board of Education and that provides necessary special education or special education and educationally related services within an approved program."

Ed 1102.19 "Local education agency" means the local school district.

Ed 1102.20 "Local school board" means the elected governing body of the local education agency which is responsible for providing elementary and secondary education to all students who reside in the district.

Ed 1102.21 "Local school district" means the political subdivisions of the state organized under RSA 194:1. Local school districts are municipal corporations under RSA 194:2.

Ed 1102.22 "Local school officials" means the administration of the local school district.

Ed 1102.23 "Parent" means a parent, a guardian, or a surrogate parent who has been appointed in accordance with Ed 1121.06. The term does not include the State of New Hampshire if the student is a ward of the state.

Ed 1102.24 "Participating agency" as used in the individualized education program transition requirements means a state or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

Ed 1102.25 "Personally identifiable" means that information includes:

(a) The name of the student, the student's parent, or other family member;

(b) The address of the student;

(c) A personal identifier such as the student's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Ed 1102.26 "Physical education" means the development of:

(a) Physical and motor fitness;

(b) Fundamental motor skills and patterns;

(c) Skills in aquatics, dance and individual or group games and sports including intramural and lifetime sports; and

(d) Includes special physical education, adaptive physical education, movement education, and motor development.

Ed 1102.27 "Receiving district" means the school district in which a home for children, health care facility or state institution is located if a student who is placed therein attends a public school in that district or receives educational services from that district.

Ed 1102.28 "Sending district" means the school district in which a student most recently resided other than in a home for children, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state. If the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides. For the purposes of this definition:

(a) A parent does not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights; and

(b) An award of legal custody by a court of competent jurisdiction, in this state or in any other state, determines legal custody.

Ed 1102.29 "Special education" means "special education" as defined in RSA 186-C:2 III, namely "instruction specifically designed to meet the unique needs of an educationally disabled child" that is team designed, provided at no cost to the parent in a setting that is determined to be the least restrictive environment for providing the special education and educationally related services delineated in an individualized education program.

Ed 1102.30 "Student evaluation" means the entire process of gathering and interpreting information about the student, the student's environment, and potential program including, but not limited to, formal and informal testing conducted by qualified and certified or licensed personnel.

Ed 1102.31 "Student with an educational disability" means "educationally disabled child" as defined in RSA 186-C:2 I, namely any person 3 years of age or older but less than 21 years of age who has been identified and evaluated by a school district" according to the provisions of Ed 1107 and determined to have autism, deafness, deaf-blindness, developmental delay, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disturbance, a specific learning disability, speech or language impairment, traumatic brain injury or visual impairment and who, because of such impairment, needs special education or special education and educationally related services. Consistent with 34 CFR 300.7, the terms used in this definition are defined as follows:

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance as defined in Ed 1102.31(j).

(b) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that cannot be accommodated in special education programs solely for students with deafness or blindness.

(c) "Child with a developmental delay" means a preschool child between 3 and 5 years of age, who, because of impairments in development, needs special education or special education and educationally related services and has been determined to have one of the other educationally disabling conditions defined in paragraphs (a) and (b) and (d) through (n).

(d) "Deafness" means a hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, such that the impairment adversely affects educational performance.

(e) "Hearing impairment" means a hearing impairment, whether permanent or fluctuating, which adversely affects a student's educational performance but which is not included under the definition of "deafness" in paragraph (d) of this section.

(f) "Mental retardation" means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period which adversely affects a student's educational performance.

(g) "Multiple disabilities" means concomitant impairments such as but not limited to mental retardation-blindness, mental retardation-orthopedic impairment, the combination of which causes such severe educational problems that cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf-blindness.

(h) "Orthopedic impairment" means a severe orthopedic impairment which adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly such as but not limited to clubfoot and absence of some member, impairments caused by disease such as but not limited to poliomyelitis and bone tuberculosis, and impairments from other causes such as cerebral palsy, amputations, and fractures or burns which cause contractures.

(i) "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a student's education performance.

(j) "Serious emotional disturbance" means:

(1) A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

a. An inability to learn which cannot be explained by intellectual, sensory, or health factors;

b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

c. Inappropriate types of behavior or feelings under normal circumstances;

d. A general pervasive mood of unhappiness or depression; or

e. A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic. The term does not include students who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(k) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and

developmental aphasia. The term does not include students who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) "Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a student's educational performance.

(m) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory; perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(n) "Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Ed 1102.32 "Special education information system" (SPEDIS) means a computer-based special education data bank and retrieval system that confidentially maintains personally identifiable data used for program development, monitoring, compliance, and reporting to the State Board of Education, the New Hampshire legislative bodies, and the federal department of education.

Ed 1102.33 "Surrogate parent" means "surrogate parent" as defined in 186-C:14 II(a), namely, "a person appointed to act as a student's advocate in place of the student's natural parents or guardian in the educational decision-making process" who is appointed pursuant to Ed 1121.06.

Ed 1102.34 "State institution" means the New Hampshire Hospital and the Youth Development Center.

Ed 1102.35 "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment and supported employment, continuing and adult education, adult services, independent living, or community participation that are based on the individual student's needs, take into account the student's preferences and interests, and include:

(a) Instruction;

(b) Community experiences;

(c) The development of employment and other post-school adult living objectives; and

(d) Acquisition of daily living skills and functional vocational evaluation, if appropriate.

Ed 1102.36 "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Ed 1102.37 "Youth Development Center" means a residential treatment center operated by The Department of Youth Development Services for adjudicated students ages 11 to 16.

CHAPTER Ed 1103
CHILD FIND

Ed 1103.01 RESPONSIBILITIES FOR THE LOCAL EDUCATION AGENCY

(a) The local education agency shall develop, implement, and coordinate an active on-going child find program which shall identify all persons ages 0 through 21 who are suspected of being a student with educational disabilities.

(b) The local education agency shall develop a written child find system which assures that all potential students with educational disabilities residing within its jurisdiction are referred to the special education evaluation team process.

(c) Such system shall contain specific provisions to meet the particular circumstances pertinent to the following groups of persons:

(1) For children 0 to 3 years, the local education agency using the special education evaluation team process shall identify and evaluate all children who are potentially students with educational disabilities and who are suspected of being in need of special education or special education and educationally related services.

(2) For students ages 3 through 21 years:

a. The local education agency, using the special education evaluation team process, shall identify, evaluate, and classify all students determined to be students with educational disabilities from age 3 through 21; and

b. This shall include students who are placed unilaterally in private school by their parents without involving the local education agency.

(d) The local education agency shall count persons 0 through 21 who are suspected of being students with disabilities by using SPEDIS. The local education agency shall provide child find data to SPEDIS on an on-going basis.

Ed 1103.02 LOCAL EDUCATION AGENCY CHILD FIND PROGRAM

(a) The local education agency child find program shall include but not be limited to the following:

(1) The local education agency shall establish in-school referral procedures which ensure that all students who are suspected or known to have an educational disability shall be referred to the special education evaluation team for further evaluation.

(2) Students may be referred to the special education evaluation team for reasons including but not limited to the following:

a. Failing to pass a hearing or vision screening;

b. Unsatisfactory performance on group achievement tests or accountability measures;

c. Receiving multiple academic and/or behavioral warnings; and

d. Repeatedly failing one or more subjects.

(3) The local education agency annually shall contact all schools within its jurisdiction to advise them of the local education agency's responsibility to identify and evaluate all students who are suspected of or known to have an educational disability and who are enrolled in such schools. Referrals from schools shall be forwarded to the special education evaluation team for further evaluation.

(4) The local education agency shall annually contact all social service agencies within its jurisdiction which provide medical, mental health, welfare, and other human services to advise them of the local education agency's responsibility to identify and evaluate all students who may have an educational disability. Referrals from these agencies shall be forwarded to the special education evaluation team for further evaluation.

(b) The local education agency annually shall disseminate information which describes its child find program. It shall include a description of the local school district's special education program, including a contact person in the school system for further information or referral.

(c) The local education agency annually shall provide all parents of students with education disabilities with information regarding their rights and responsibilities under federal and state law regarding special education.

(d) The local education agency shall ensure that all referrals from parents and others who suspect or know a student to have an education disability shall be referred to the special education evaluation team. The local education agency shall provide the parents with a written notice of any referral other than one initiated by the parent, in accordance with Ed 1107.02(b).

Ed 1103.03 CHILD FIND FOR STUDENTS PLACED IN HOMES FOR CHILDREN, HEALTH CARE FACILITIES, OR STATE INSTITUTIONS

(a) In order to ensure that all relevant agencies and/or groups within the boundaries of each local school district are aware of the district's child find efforts and of the process for referring a child who is or may be involved with the state court and for whom a special education program may be appropriate, the district shall:

(1) Appoint a district employee to direct the child find effort;

(2) Publicize the name of that person, his/her functions, and the manner by which he/she might be contacted within the district;

(3) Correspond with or contact at least once a year, agencies or groups within the district which might have knowledge of students with disabilities who are not being served, explaining the referral process and requesting that they refer to the district students under the age of 21 who might have educational disabilities. Agencies which shall be contacted are:

a. Local DCYF offices;

b. DYDS offices;

c. Local public defenders;

d. Local district courts;

e. Local residential educational and treatment programs; and

f. Social service agencies which provide medical, mental health, welfare and other human services.

CHAPTER Ed 1105
REPORTING REQUIREMENTS OF LOCAL EDUCATION AGENCIES

Ed 1105.01 ONGOING REQUIREMENTS

(a) A copy of the annual statement of program form shall be filed annually with the New Hampshire Department of Education for monitoring purposes. The appropriate SPEDIS forms covering this information shall be filed with the state education agency within 20 calendar days after they are signed by the parent.

(b) Each local education agency shall file a written application meeting the requirements of Ed 1129.01 with the Department of Education. Local education agencies shall review their application annually and shall make revisions as necessary.

(c) The local education agency shall count persons ages 0 through 21 who are suspected or known to be students with educational disabilities by using SPEDIS.

(d) The local education agency shall provide child find data collected in accordance with Ed 1103.01 to SPEDIS on an on-going basis.

CHAPTER Ed 1107
EVALUATION AND DETERMINATION OF EDUCATIONAL DISABILITIES

Ed 1107.01 TESTING INSTRUMENTS. The following minimum protections in evaluation procedures shall be afforded students.

(a) Where appropriate a full and individual evaluation of the child's educational needs shall be administered to students suspected of having educational disabilities.

(b) Evaluations shall be designed to aid in the establishment of appropriate special education or special education and educationally related services for those students. Appropriate placements and programs are dependent upon accurate, comprehensive, and nondiscriminatory assessment procedures.

(c) Evaluation shall be conducted so as to avoid discrimination on the basis of race, culture, or severity of disabilities, especially when differences in social mores, backgrounds, experiences, or communication are suspected.

(1) Verbal evaluation materials and instructions for other evaluation materials shall be presented in the student's native language or other mode of communication unless commonly accepted standards of professional practice indicate it is clearly not feasible to do so;

(2) Translation of normed verbal test materials shall invalidate test norms. Therefore, tests standardized in the student's native language shall be used wherever possible. This requirement shall not, however, preclude the evaluation of standard English communication as an acquired academic skill. The distinction between this form of achievement testing and intellectual assessment shall be established in the evaluation plan; and

(3) If it is not feasible to administer a test in the student's native language, then that assessment tool shall not be used.

(d) Evaluation materials shall be validated for the purpose for which tests are to be administered. Responsibility for demonstrating the validity, reliability, and appropriateness of test materials shall rest ultimately with the qualified examiner administering the test.

(1) There shall be clear specification of the samples used for both item validation and test standardization;

(2) Inclusion of a small number of minority group members in a norming sample shall not make the test "fair" to members of that group; and

(3) General population norms and the references shall be clear and specific.

(e) Evaluation materials shall have been recommended by their producer for a specific purpose and administered in conformance with the instructions provided by their producers. However, when a standardized administration operates to the detriment of the student's performance, the tests shall also be adapted as needed and both standardized and adapted results shall be reported by the examiner.

(f) The battery of evaluation materials consisting of tests and other evaluation instruments shall be designed to assess specific areas of education need, not merely to provide a single, general intelligence quotient. There shall be clear specification of peripheral demands made by the tests such as, but not limited to, language requirements in math tests, time limits, and background or vocabulary assumed in tests of reasoning. Evaluation of the students with educational disabilities shall include, where appropriate, psychomotor assessments, sensory development assessments, adaptive behavior scales, and vocational evaluations.

(g) Evaluation materials administered to a student with impaired sensory, manual, or speaking skills shall yield results which accurately reflect the student's aptitude or achievement level or other factors they purport to measure. This requirement may require highly specialized and adapted techniques and equipment, especially for students with severe and multiple disabilities.

Ed 1107.02 PROCESS

(a) The local education agency shall establish a process for referral and evaluation which includes individual participants responsible for decision-making and implementation.

(b) Upon receipt of a referral from any source and prior to the evaluation of a student suspected of being a student with educational disabilities, the special education evaluation team shall immediately notify the parent, in writing, of the referral.

(c) Within 15 days of the referral the special education evaluation team shall determine whether the concerns raised by the referral can be addressed utilizing existing pupil support services available to all students, whether additional information must be gathered, and what testing, if any, is needed to address any unresolved concerns raised by the referral.

(d) Within 15 days of the referral the special education evaluation team shall give the parent, written notice of its disposition of the referral. This notice shall be clearly understandable to parents and shall conform to the requirements of Ed 1125.03 (b-d) and include a description of the local education agency's special education procedures. When additional testing has been determined to be necessary, the notice shall also include a request for written consent to conduct any individual evaluations needed to determine the student's educational disabilities.

(e) If the student's parent disagrees with the special education evaluation team's disposition of the referral, the parent may activate the due process procedures described in Ed 1128.

(f) If parental consent for evaluation is not granted, the local education agency may activate the due process procedures described in Ed 1128.

(g) Written parental consent shall be required for individual evaluations to further diagnose the needs of a student already determined to be a student with educational disabilities.

Ed 1107.03 MULTIDISCIPLINARY EVALUATION. For the purpose of student evaluation, the special education evaluation team shall guarantee that:

(a) The evaluations considered by the special education evaluation team, shall be made by a multidisciplinary group of persons including at least one teacher certified in the area of each suspected disability and one qualified examiner, as specified in Ed 1107.05, for each area of suspected disability.

(b) The student shall be assessed in all areas related to the suspected disability including, where appropriate:

(1) Health;
(2) Vision;
(3) Hearing;
(4) Social and emotional status;
(5) General intelligence;
(6) Academic performance;
(7) Communicative skills; and
(8) Motor ability.

(c) No single procedure shall be used as the sole criterion for determining eligibility, disabilities and appropriate educational program.

(d) The student's current academic performance is assessed.

(e) Examinations shall be conducted by persons certified or licensed by the State of New Hampshire. Examinations conducted in another state shall be conducted by persons certified or licensed by that state.

(f) Teachers or other specialists with knowledge in the area of the suspected disability who are participating in the evaluation shall be certified or licensed by the State of New Hampshire for each disability suspected.

(g) A vocational evaluator shall assess secondary students with educational disabilities, where appropriate.

(h) The student's educational history shall be reviewed including identification of his/her past opportunities to have acquired important skills and information.

(i) The data used in decision-making shall be current and, in no case, be no more than 3 years old.

(j) Students with educational disabilities shall be re-evaluated every 3 years or more frequently if the student's parent or teacher requests an evaluation.

(k) When an individual intelligence test is included in the battery of evaluation materials as a component of an initial evaluation, a Stanford-Binet Intelligence Scale, Wechsler Intelligence Test or any other similar controlled instrument shall be used.

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(l) When evaluating a student suspected of having mental retardation, assessment of adaptive behavior shall be included as part of the total process of evaluation.

Ed 1107.04 COSTS ASSOCIATED WITH EVALUATIONS

(a) The expense incurred in any local education agency evaluation procedure recommended by the special education evaluation team shall not be the financial obligation of the parent but of the local education agency or other financial resources such as, but not limited to, another public agency or Medicaid.

(b) A parent may request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local education agency. However, the local education agency may initiate a hearing, as outlined in Ed 1128 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, then the parent may still have an independent educational evaluation but not at public expense.

Ed 1107.05 QUALIFIED EXAMINERS

(a) Formal diagnostic assessments by a qualified examiner and a teacher certified in the area of the disability shall occur:

(1) Prior to any action with respect to the initial placement of a student with an educational disability into a special education program; or

(2) The transfer or denial of transfer of said student from a special education program to a full-time regular class placement other than interim placement.

(b) For purposes of this section, "qualified examiners" means persons licensed or certified by the appropriate state agency or state board.

(c) Qualified examiners for specific disabilities shall be as set forth in Table 1100.1.

Table 1100.1 Qualified Examiners by Type of Disability

Type of Disability	Qualified Examiners
Autism	- Physician - Speech/language pathologist - Psychologist - School psychologist - Associate school psychologist
Deafness	- Otologist - Otolaryngologist - Audiologist who holds a certificate of clinical competency in Audiology from the American Speech-Language-Hearing Association or its equivalent

Table 1100.1 Qualified Examiners by Type of Disability

Type of Disability	Qualified Examiners
Deaf-blindness	- Otologist - Otolaryngologist - Ophthalmologist - Other physician
Developmental delay	- Examiners must be qualified for the specific disabilities suspected of causing the developmental delay
Hearing impairment	- Otologist - Otolaryngologist - Audiologist who holds a certificate of clinical competency in Audiology from the American Speech-Language-Hearing Association or its equivalent
Mental retardation	- School psychologist - Associate school psychologist - Psychologist - Associate psychologist - Specialist in the assessment of intellectual functioning (SAIF)
Multiple disabilities	- Otologist - Ophthalmologist - Other physician
Orthopedic impairment	- Physician
Other health impaired	- Physician
Serious emotional disturbance	- School psychologist - Associate school psychologist - Psychologist - Associate psychologist - Psychiatrist
Specific learning disability	- A special education evaluation team responding to results from valid assessment instruments
Speech or language impairment	- Speech/language pathologist - Persons issued a New Hampshire Department of Education specialist certificate as a speech and hearing therapist before July 1, 1986.
Traumatic brain injury	- Physician - Speech/language pathologist - Psychologist - School psychologist - Associate school psychologist
Visual impairment including blindness	- Ophthalmologist - Optometrist

(d) Qualified examiners shall not determine the educational disability of any student. Determination of educational disabilities shall be made only by the special education evaluation team. The student shall be evaluated by a qualified examiner in each area of suspected disability.

(e) Team determination of the student's educational disabilities shall be based on facts determined through the individual evaluation conducted in accordance with Ed 1107.01 which shall be presented and interpreted in written form by the appropriate qualified examiners. Each team shall have a teacher of the suspected disability as a participating member.

(f) In no instance shall examiners administer and interpret instruments used in the determination of an educational disability for which he/she is not qualified.

(g) Qualified examiners shall not endorse, support, or present results from evaluations performed by other individuals who are not qualified examiners.

(h) If a local school district's special education evaluation team contracts evaluations with another agency, it shall be that district's responsibility to ensure that those evaluations are administered and interpreted by qualified examiners.

(i) At all times qualified examiners shall take into account cultural or linguistic differences and/or the presence of other disabilities when selecting, using, or interpreting assessment instruments. No assessment shall be attempted when a student is unable to respond to the tasks or behavior required by a test because of:

(1) Linguistic or cultural limitations of the assessment; or

(2) The presence of other disabilities.

(j) Qualified examiners shall administer and interpret test results and provide written reports to the local education agency.

(k) The evaluation process, including a written summary report, shall be completed within 45 days after receipt of parental permission for testing. This time requirement may be extended for a specific number of days if both the parent and the local education agency agree in writing to the extension. A copy of all agreements shall be filed with the student's records maintained by the local education agency.

Ed 1107.06 EVALUATION REPORT

(a) The special education evaluation team determining the student's educational disabilities shall develop a written summary containing the results of the various diagnostic findings and forward a copy of said report to the parent and a copy for the student's folder. The report shall be written after the student's initial evaluation and at least once every 3 years thereafter.

(b) The report shall include but not be limited to:

(1) The results of each evaluation procedure, test, record, or report;

(2) A written summary of the findings of the procedure, test, record, and/or report; and

(3) Information regarding the parent's rights of appeal in accordance with Ed 1128 and a description of their right to an independent evaluation in accordance with Ed 1125.06.

Ed 1107.07 DETERMINATION OF DISABILITIES

(a) New Hampshire state statutes shall apply to all students with educational disabilities until such time as the student has acquired a high school diploma or has attained the age of 21, whichever occurs first, or until the school district responsible for developing the student's individualized education program determines that the student no longer requires special education in accordance with the provisions of this chapter.

(b) To be eligible under these rules, a student shall meet 2 criteria:

(1) The student shall have an educational disability; and

(2) The student shall require special education as a result of that educational disability.

(c) The special education evaluation team determining the student's educational disability/disabilities shall consist of a minimum of 3 persons including at least:

(1) A teacher certified in each area of suspected disability;

(2) An individual knowledgeable about the student as a result of having had personal contact with the student in the school or, if the student is below school age, at another appropriate setting; and

(3) A representative of the local education agency, other than the child's teacher, responsible for the supervision of special education.

(d) In interpreting evaluation data, the special education evaluation team shall:

(1) Draw upon information from a variety of sources including:

a. Aptitude and achievement tests;
b. Teacher recommendations;
c. Physical condition;
d. Social or cultural background;
e. Adaptive behavior; and
f. The student's parent(s).

(2) Ensure that information obtained from all of these sources is documented and carefully considered in the eligibility and placement decisions.

(e) If the special education evaluation team determines that a student is a student with educational disabilities and needs special education or special education and educationally related services, an individualized education program shall be developed in accordance with Ed 1109 and re-evaluated at least annually.

(f) If the parent(s) disagree with the decision of the special education evaluation team, he/she may proceed with the impartial due process hearing procedures delineated in Ed 1128.03.

(g) For newly identified students with educational disabilities, the meeting(s) to write the individualized education program shall be conducted within 30 days of determination of the student's eligibility for special education.

Ed 1107.08 EVALUATION REQUIREMENTS FOR STUDENTS WITH SPECIFIC LEARNING DISABILITIES. The following shall also apply to students suspected of having a specific learning disability:

(a) For students who are suspected of having one or more specific learning disabilities, the following additional persons shall be included on the multidisciplinary evaluation team:

(1) The student's regular teacher or, if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his/her age; and

(2) At least one person qualified to conduct individualized diagnostic examinations of students such as, but not limited to, school psychologists, speech and language pathologists, or remedial reading teachers.

(b) For a student suspected of having a specific learning disability, the following criteria shall be used to determine an educational disability:

(1) A team shall determine that a student has a specific learning disability if:

a. The student does not achieve commensurate with his/her age and ability levels in one or more of the areas listed in Ed 1107.08(b)(1)b. when provided with learning experiences appropriate for the student's age and ability levels; and

b. The team finds that a student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skill;
5. Reading comprehension;
6. Mathematics calculation; or
7. Mathematics reasoning.

(2) The team shall not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

a. A visual, hearing, or motor disability;
b. Mental retardation;
c. Emotional disturbance; or
d. Environmental, cultural, or economic disadvantage.

(c) At least one team member other than the student's regular teacher shall observe the student's academic performance in the regular classroom setting. The time of day, length of observation, and activities observed shall be recorded. In the case of a person of less than school age or one who is out of school, a team member shall observe the person in an environment appropriate for a person of that age.

(d) The team shall prepare a written report which shall include a statement of:

(1) Whether the student has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the student;

(4) The relationship of that behavior to the student's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education or special education and educationally related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(e) Each team member shall certify, in writing, whether the written report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusion.

CHAPTER Ed 1109
THE INDIVIDUALIZED EDUCATION PROGRAM

Ed 1109.01 ELEMENTS OF AN INDIVIDUALIZED EDUCATION PROGRAM. Each individualized education program shall include:

(a) A statement of the student's present level of educational performance;

(b) A statement of the annual goals, including short-term instructional objectives;

(c) The extent to which the student shall participate in a regular class or program;

(d) The expectations for the student when participating in a regular class or program;

(e) A vocational education component if appropriate for the student;

(f) A statement of the special education, transportation, if required, and other educationally related services to be provided;

(g) The projected dates for initiation of services and anticipated duration of the services;

(h) The length of the school year and the school day required to implement the individualized education program;

(i) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved;

(j) A list of individuals when known or, if unknown, the type of service provider who would be responsible for implementing the individualized education program;

(k) A statement of the party or parties assuming the financial responsibility for the implementation of the individualized education program;

(l) For students beginning no later than age 16, and at a younger age if determined appropriate, a statement of the needed transition services as defined in Ed 1102.35 including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting;

(m) If the team developing the individualized education program determines that services are not needed in one or more of the areas specified in Ed 1102.35 the individualized education program shall include a statement to that effect and the basis upon which the determination was made; and

(n) Signature of the parent, legal guardian, surrogate parent, or student, where appropriate, and representatives of the local education agency stating approval of the provisions in the individualized education program.

Ed 1109.02 PROCESS FOR DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAMS

(a) The local education agency shall initiate and conduct meetings for the purpose of developing, reviewing and revising the individualized education programs for students placed in district programs and for those placed in private facilities and/or other non-district programs.

(b) For newly identified students with educational disabilities, the meeting to develop the individualized education program shall be conducted within the first 30 days of determination of the student's eligibility for special education.

(c) For previously identified students with educational disabilities, the meetings shall be held at least annually for the purposes of reviewing and/or revising the individualized education program.

(d) The individualized education program shall be in effect by the beginning of each school year.

(e) The individualized education program shall be implemented as soon as possible following the individualized education program meeting.

(f) If a participating agency fails to provide agreed-upon transition services contained in the individualized education program of a student with a disability, the local education agency shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's individualized education program.

(g) Nothing in this part shall relieve any participating agency, including the Division of Vocational Rehabilitation of the Department of Education, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with educational disabilities who meet the eligibility criteria of that agency.

Ed 1109.03 PARTICIPANTS IN THE DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAMS

(a) The parent shall have the right to participate in the development, review and revising of the individualized education program.

(b) The local education agency shall ensure that participation in each meeting includes:

(1) A representative of the local education agency, other than the student's teacher, who is qualified to provide or supervise the provision of special education or special education and educationally related services;

(2) The student's teacher or teachers, special or regular or both, who will have responsibility for implementing the various elements of the individualized education program;

(3) When the student's teacher is not known, a teacher qualified to provide special education in the area of the identified disability shall be used;

(4) Vocational education representatives, where appropriate;

(5) One or both of the student's parents, guardians, and/or surrogate parents;

(6) The student, if of the age of majority;

(7) Other individuals, including the student, at the discretion of the parent or local education agency; and

(8) A member of the multidisciplinary special education evaluation team for those students who have been newly identified as having an educational disability.

(c) If a purpose of the meeting is the consideration of transition services for a student, the local education agency shall invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the local education agency shall take other steps to ensure that the student's preferences and interests are considered.

(d) If an agency invited to send a representative to the meeting does not do so, the local education agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

Ed 1109.04 ENSURING PARENTAL PARTICIPATION IN THE DEVELOPMENT, REVIEW AND REVISING OF THE INDIVIDUALIZED EDUCATION PROGRAM

(a) The local education agency shall ensure that one or both of the parents of the student with educational disabilities receive written notice no less than 10 days before the meeting. The notice shall include the purpose, time, location and identification of the participants.

(b) The 10-day notice requirement shall be waived with the written consent of the parent or upon the written request of the parent.

(c) The local education agency shall take steps to ensure that one or both of the parents are present at each meeting or are afforded the opportunity to participate. Such steps shall include scheduling the meeting at a mutually agreed upon time and place.

(d) If a purpose of the meeting is the consideration of transition services for a student, the notice to the parents shall:

(1) Indicate this purpose;

(2) Indicate that the student shall be invited; and

(3) Identify any other agency that shall be invited to send a representative.

(e) If neither parent can attend, the local education agency shall use other methods to ensure parental participation, including individualized or conference telephone calls.

(f) A meeting may be conducted without a parent in attendance if the local education agency is unable to convince the parents that they should attend. In this case, the local education agency shall have a record of its attempts to arrange a mutually agreed-upon time and place.

(g) Records referred to by Ed 1109.04(f) shall include any or all of the following:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any response received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(h) The local education agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

Ed 1109.05 UTILIZATION OF THE INDIVIDUALIZED EDUCATION PROGRAM

(a) The individualized education program shall be a formal commitment on the part of the local education agency to provide specific programs and services designed to meet the unique educational needs of the student. Therefore, each teacher and service provider listed as having responsibilities shall receive a copy of the complete individualized education program for working and monitoring purposes.

(b) Evidence documenting implementation of the individualized education program shall be maintained, including:

(1) The provision of instruction and educationally related services;

(2) Its use as a reference tool; and

(3) As a means of monitoring the appropriateness of the program based on the progress of the student.

(c) For the parent, the individualized education program shall be the agreed-upon program and services to be provided by the local education agency. As a result, all modifications shall occur only with parental approval in accordance with Ed 1125.04(a)(6).

Ed 1109.06 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAMS FOR STUDENTS REFERRED TO OR PLACED IN PRIVATE FACILITIES OR OTHER NON-DISTRICT PROGRAMS.

(a) The local education agency shall develop, implement, maintain, and evaluate individualized education programs for students with educational disabilities who are referred to, placed, or enrolled in private schools or other non-district programs by the local education agency.

(b) The local education agency shall initiate and conduct individualized education program meetings for the development, maintenance and evaluation of individualized education programs for such students. The meetings shall be conducted before the student is referred, enrolled or placed in a private school or non-district program.

(c) The local education agency shall ensure the attendance or participation of teachers or private school and/or other non-district program representatives at the meeting. If the representative cannot attend, the agency shall use other methods, including individual or conference calls, to ensure participation by the private school or facility.

(d) The local education agency shall ensure the individualized education program meets the requirements of Ed 1109.02, Ed 1109.04, and Ed 1109.05 even if it delegates responsibility for developing the individualized education program to the private school and/or non-district program.

(e) The meetings to review and/or revise the individualized education program of these students may be conducted by the private school and/or other non-district program personnel at the discretion of the local education agency. The local education agency representatives and the student's parent shall be involved in the review and/or revision meetings and shall approve proposed changes prior to implementation.

(f) The local education agency shall provide a copy of the approved individualized education program to the private school and/or other non-district program and the parent.

(g) The local education agency shall ensure that all changes, modifications, and/or revisions of individualized education programs shall occur in accordance with Ed 1109.06.

(h) After the child is placed in the private school the responsibility for compliance with the IDEA remains with the local education agency and, in its monitoring/enforcement capacity, the state education agency.

Ed 1109.07 RESPONSIBILITIES OF PRIVATE FACILITIES OR OTHER NON-DISTRICT PROGRAMS IN THE IMPLEMENTATION OF INDIVIDUALIZED EDUCATION PROGRAMS

(a) Each private facility or other non-district program shall, in all matters concerning possible changes and/or modifications in the identification, evaluation, development and/or revision of individualized education program, or changes in placement of a student with educational disabilities, contact the sending school district for the purpose of initiating the process changing any of the above and following the procedures of Ed 1109.06.

(b) The private facility or other non-district program shall provide all facilities, equipment, and materials necessary for the implementation of any individualized education program or portion thereof which the program has agreed to implement. The private facility or other non-district program shall implement all components of each student's individualized education program in the amount and for the duration so specified. The private facility or other non-district program shall not unilaterally modify a student's individualized education program.

Ed 1109.08 DURATION OF INDIVIDUALIZED EDUCATION PROGRAMS

(a) The duration of the individualized education program shall be determined by the team developing it but shall not exceed 12 months.

(b) For students whose unique educational needs require individualized education programs which exceed the standard school year, the requirements of Ed 1111.01 shall be followed.

(c) When appropriate, and with parental consent, an individualized education program shall be approved for a short time, such as a few months, to allow for further evaluation for the purpose of developing a more complete annual individualized education program.

(d) The individualized education program shall be in effect before special education or special education and educationally related services are provided. The sequence shall be identification, evaluation, development of an individualized education program, and placement. The individualized education program shall be reviewed at least annually and, if necessary, revised.

Ed 1109.09 DISTRIBUTION OF COPIES OF INDIVIDUALIZED EDUCATION PROGRAM. The local education agency shall provide complete copies of the approved individualized education programs to:

(a) The parent, guardian, and/or surrogate parent;

(b) The student, if of age of majority;

(c) The student's special education teachers, regular class teachers, and vocational teachers responsible for implementation; and

(d) Related service personnel responsible for implementation.

Ed 1109.10 ACCOUNTABILITY FOR ACHIEVEMENT OF INDIVIDUALIZED EDUCATION PROGRAMS

(a) The individualized education program shall not be a legally binding contract.

(b) Each responsible agency shall provide the special education or special education and educationally related services to a student with educational disabilities as specified in the individualized education program. These rules shall not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and objectives.

(c) Agencies and educational personnel shall not be relieved from making good faith efforts to assist the student in achieving the objectives and goals listed in the individualized education program. The right of the parent to complain and ask for revisions of the student's program or to invoke due process procedures if the parent feels that these efforts are not being made shall not be limited.

Ed 1109.11 MONITORING AND ANNUAL EVALUATION OF INDIVIDUALIZED EDUCATION PROGRAMS

(a) The local education agency shall develop and implement procedures designed to ensure that individualized education programs are monitored in a regular and systematic manner. The individualized education program team may be reconvened at any time to review the provisions of the individualized education program.

(b) The local education agency annually shall conduct at, or near, the end of the term of each individualized education program a meeting for the purpose of assessing the effectiveness of the present plan and to design an individualized education program for the ensuing 12 month period, including extended school year programming when appropriate.

CHAPTER Ed 1111
EXTENDED SCHOOL YEAR PROGRAMMING

Ed 1111.01 INDIVIDUALIZED EDUCATION PROGRAMS FOR EXTENDED SCHOOL YEAR PROGRAMMING

(a) The local education agency shall provide an extended school year program to any student with educational disabilities for whom it can be demonstrated by a preponderance of evidence that interruption of the student's special education program or educationally related services would have the effect of negating the benefits of the student's standard school year program.

(b) The local education agency shall ensure that the program for a student with educational disabilities is appropriate, not only as to the type of program, but also to the duration of the same.

(c) The provision of special education services for a period other than the standard school year shall be considered an educationally related service and may involve modification in the services of the individualized education program in terms of physical location, such as geographic location or duration, including hours, days and/or weeks.

(d) An extended school year program shall include the number of days or weeks appropriate to the individual educational needs of the student with educational disabilities and shall be made on an individual basis.

(e) The procedure for determining the duration of a program other than the standard school year shall be as follows:

(1) The individualized education program/placement team shall make a final decision regarding the provision of an extended school year program by April 30 of the current year but no less than 60 days prior to proposed start date of the extended school year program unless an extension of a specific period of time is granted in writing by the parent(s);

(2) The individualized education program/placement team shall base its recommendations upon reliable and comprehensive information about the student and the likelihood that the student will suffer harm or regression significant enough to negate the benefits of the student's school year special education program; and

(3) The special education individualized education program/placement team shall provide the parent(s) written notice of its decision regarding the provision of extended school year programming. The notice shall conform with the requirements of Ed 1125.03 of these rules.

(f) All rights, guarantees, and procedures as outlined in Chapter Ed 1100 shall be afforded all parties, including students with educational disabilities, the parent, legal guardian, surrogate parent, and school districts during the duration of the individualized education program for extended school year programming.

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CHAPTER Ed 1113
VOCATIONAL EDUCATION FOR STUDENTS WITH DISABILITIES POLICY

Ed 1113.01 VOCATIONAL ASSESSMENTS

(a) Each student with educational disabilities for whom vocational education experiences are being considered by the special education evaluation team shall receive vocational assessments administered by diagnosticians trained in the administration and interpretation of such tests.

(b) The vocational diagnosticians shall provide the special education evaluation team with a written report of test selection, findings, and recommendations within 45 days, for incorporation into the written summary report as required in Ed 1107.06.

(c) All of the requirements for diagnostic information specified in Ed 1107.01 and Ed 1107.02 shall apply, where appropriate, to the selection, administration, and interpretation of vocational assessments.

Ed 1113.02 THE VOCATIONAL EDUCATION COMPONENT OF THE INDIVIDUALIZED EDUCATION PROGRAM

(a) Each student with educational disabilities for whom vocational education experiences are to be provided shall have a vocational education component included as an integral part of the individualized education program, in accordance with Ed 1109.01(e).

(b) All of the requirements for the individualized education program specified in Ed 1109 shall apply, where appropriate, to the development, approval, and implementation of the vocational education component.

Ed 1113.03 VOCATIONAL PLACEMENT FOR STUDENTS WITH EDUCATIONAL DISABILITIES

(a) Each student with educational disabilities for whom a vocational education component has been developed, approved, and included as part of the individualized education program shall be placed in accordance with Ed 1115.

(b) The type and nature of the vocational placement shall be in accordance with the continuum of alternative education environments, as specified in Ed 1115.03.

(c) Regional vocational facilities shall be utilized on a partial or full-time basis when appropriate for the delivery of a special education program for a student with educational disabilities.

(d) Students with disabilities shall be admitted to regional vocational education center programs on the basis of vocational needs as outlined in their individualized education program and availability of space.

CHAPTER Ed 1115
PLACEMENT OF STUDENTS WITH EDUCATIONAL DISABILITIES

Ed 1115.01 **POLICY STATEMENT**. Each local school district shall ensure that, to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who do not have disabilities and that, consistent with 34 CFR 300.550(b)(2), special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Ed 1115.02 **THE PLACEMENT DECISION**

(a) The decision to place any student with educational disabilities shall occur after and pursuant to the development and approval of an individualized education program. The placement decision shall be based on the unique educational needs of the student as specified in the individualized education program and the requirement for placement in the least restrictive environment.

(b) In making placement decisions, the team shall:

(1) Draw upon information from a variety of sources, including but not limited to aptitude and achievement tests and teacher recommendations;

(2) Consider information about the student's physical condition, social or cultural background, and adaptive behavior;

(3) Ensure that information obtained from all of these sources is documented and carefully considered;

(4) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(5) Ensure that the placement decision is made in conformity with the least restrictive environment.

Ed 1115.03 **SPECIAL EDUCATION PLACEMENT TEAM MEMBERSHIP**. The special education placement team recommending placement for the student with educational disabilities shall consist of the following membership:

(a) A representative of the local education agency, other than the student's teacher, who is certified to provide special education or who is responsible for supervising the provision of special education or special education and educationally related services.

(b) The student's teacher or teachers, special or regular or both, who will have responsibility for implementing the various elements of the individualized education program. When the student's teacher is not known, a teacher certified to provide special education in the area of the identified disability shall be used.

(c) Vocational education representatives, where appropriate;

(d) One or both of the student's parents, guardians, and/or surrogates; and

(e) The student, if of the age of majority;

(f) Other individuals, including the student, at the discretion of the parent or local education agency;

(g) A member of the multidisciplinary special education evaluation team for those students who have been newly identified as having an educational disability; and

(h) A representative of the private school or facility when placement in such a school or facility is likely.

Ed 1115.04 CONTINUUM OF ALTERNATIVE EDUCATION ENVIRONMENTS

(a) The ensuing descriptions are for the purpose of illustrating a range of educational environments. Within each of the categories, school districts shall provide a variety of alternatives designed to meet the unique needs of individual students.

(b) School districts shall, at minimum, give evidence that the alternative educational environments set forth in Table 1100.2 are available or would be made available as placements for students with educational disabilities, including children of preschool age.

Table 1100.2 Alternative Education Environments

Educational Environments	Description
Regular classroom	A student with educational disabilities attends regular class with a modified curriculum.
Regular classroom with consultative assistance	A student with educational disabilities attends a regular class with assistance being provided to the classroom teacher by consulting specialists, such as a psychologist.
Regular classroom with assistance by itinerant specialists	A student with educational disabilities attends a regular class with services, such as orientation and mobility, provided to the student by itinerant specialists.
Regular classroom plus resource room help	A student with educational disabilities attends a regular class and receives assistance at or through the resource room program.
Regular classroom plus part-time special class	A student with educational disabilities attends a regular class and a self-contained special education classroom.
Full-time special class	A student with educational disabilities attends a self-contained special class full time.
Full-time or part-time special day school	A student with educational disabilities attends a publicly or privately operated special day program full-time or part-time.
Full-time residential placement	A student with educational disabilities attends a publicly or privately operated residential program full-time.
Home-based programming	A student receives all or a portion of her/his special education program at home in accordance with Ed 1115.04(c).
Hospital or institution	A student with educational disabilities receives special education while confined to a hospital or institution.

(c) Local education agencies shall provide students with disabilities home-based programming as follows:

(1) Preschool students with disabilities may receive all or a portion of their special education program at home depending upon need as specified in the individualized education program.

(2) Students with disabilities ages 6 to 21 may receive a home-based program on a temporary basis. Such programs:

a. Shall minimally include 5 hours per week of specially designed instruction as specified in the student's individualized education program; and

b. May also include educationally related services as specified in the student's individualized education program. Any educationally related services so provided shall be in addition to the 5 hours of specially designed instruction.

(d) Except as provided in Ed 1115.04 temporary home-based programs shall not exceed 45 days of a calendar year.

(e) Home-based programs as described in Ed 1115.04(c) shall not include parent-designed home education programs as authorized in Ed 315.

(f) A student with an educational disability who is in a hospital or institution may receive special education or special education and educationally related services in that setting.

Ed 1115.05 PROCEDURE FOR PROVIDING HOME-BASED PROGRAMMING IN EXCESS OF 45 DAYS IN A CALENDAR YEAR

(a) When circumstances are such that it may be appropriate for the individualized education program for a student with educational disabilities to be implemented at home for more than 45 days of a calendar year the district shall:

(1) Describe, in writing, the specific circumstances resulting in the need for the home-based program.

(2) Develop a complete and detailed individualized education program specifically for the home-based program which includes all the elements in Ed 1109.01 and the following:

a. The name, title, employer, and copy of the certificate, license, or other appropriate statement of qualifications for each of the individuals implementing the home-based program, including all teachers, therapists, aides, consultants and supervisors;

b. The specific instructional materials and equipment to be brought into the home to implement the individualized education program;

c. A description of the support services to be provided to the student's parent or primary care giver in the home; and

d. A description of the physical space in the home which will be used to implement the individualized education program.

(3) Develop a written plan for the transition of the student into a school-based program which shall include the following:

a. Objective criteria for determining when the student will no longer require a home-based program and will receive special education services in a school-based program;

b. Specific activities for each phase of the transition; and

c. The specific time frame for each phase of the transition process.

(b) At least 10 days prior to the 46th day of the home-based program the local education agency shall submit the following to the state director of special education.

(1) The student's individualized education program and a completed and signed annual statement of program;

(2) Minutes of the special education placement team meeting at which the decision to implement the home-based program was made, including:

a. The basis for the decision;

b. A list of the specific documentation reviewed by the team such as physician's reports, test results, reports of professionals knowledgeable about the student's educational disability, pertinent information from any other relevant source; and

c. The transition plan as described in Ed 1115.05(a)(3).

(c) The state director of special education shall review all the documentation submitted in accordance with Ed 1115.04(b) and take one of the following actions:

(1) Inform the district in writing that the proposal is the least restrictive environment for the student;

(2) Inform the district in writing that, based on the submitted documentation, the proposed home-based program in excess of 45 days is not the least restrictive environment for the student;

(3) Inform the district in writing, of alternatives to the proposed home-based program that are the least restrictive environment for the student;

(4) Request additional information in writing; or

(5) Order an investigation by the department's complaint officer into the district's least restrictive environment practices and so inform the district in writing.

Ed 1115.06 SPECIFIC REQUIREMENTS REGARDING PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

(a) Each local school district shall ensure that the educational placement for every student with educational disabilities is:

(1) Determined annually;

(2) Based upon the approved individualized education program;

(3) As close as possible to the student's home; and

(4) Determined individually for each student.

(b) Unless the individualized education program for a student with educational disabilities requires some other arrangements, the student shall be educated in the school which he/she would attend if he/she did not have educational disabilities.

(c) In selecting the least restrictive environment, the local education agency shall consider any potentially harmful effect of possible placements on the student or on the quality of services which he/she needs.

Ed 1115.07 PROVISION OF NON-ACADEMIC AND EXTRACURRICULAR SERVICES FOR STUDENTS WITH EDUCATIONAL DISABILITIES

(a) Non-academic and extracurricular services shall include but not be limited to counseling services, transportation, health services, referrals to agencies which provide assistance to persons with disabilities, employment of students, including both employment by the local school district and assistance in making outside employment available.

(b) Non-academic and extracurricular services shall include but not be limited to meals, recess periods, athletics, recreational activities, special interest groups or clubs sponsored by the local school district.

(c) Each school district shall ensure that every student with educational disabilities participates with students who do not have disabilities in non-academic and extracurricular services and activities to the maximum extent appropriate to the needs of that student.

Ed 1115.08 DENIAL OF PLACEMENT

(a) If the diagnostic information shows that the student does not have and does not need special education or special education and educationally related services, the student shall not be classified and recorded as such and his/her educational program shall not be bound by these standards.

(b) If a parent does not agree with the written decision of the special education placement team, the due process procedures described in Ed 1128 may be accessed.

CHAPTER Ed 1117

PARTICIPATION OF PRIVATE SCHOOL STUDENTS WHO ARE PLACED IN PRIVATE SCHOOLS BY PARENTS WITHOUT THE COOPERATION OF A LOCAL EDUCATION AGENCY

Ed 1117.01 DEFINITIONS

(a) "IDEA funded program benefits" means programs and services designed to provide special education or educationally related services to students with educational disabilities that are paid for with federal IDEA funds distributed by the Department of Education to a local education agency after submission and approval of the local education agency's application as required by Ed 1129.01.

(b) "Private school" means a school not operated by a public agency.

(c) "Private school student" means a student who has been found to be a student with educational disabilities and in need of special education or special education and educationally related services by the local education agency's special education evaluation team and who has been placed in a private school by the parent without the cooperation of the local education agency.

Ed 1117.02 JURISDICTION. Local education agencies shall be responsible to provide special education or special education and educationally related services to students with educational disabilities who reside in the jurisdiction of the agency, such responsibility being dependent on the residence of the parent described as follows:

(a) If a parent resides within the jurisdiction of a local education agency and places a student in a private facility located within the jurisdiction of the local education agency, the local education agency shall have the responsibility to provide special education or special education and educationally related services under these provisions;

(b) If a parent resides in the jurisdiction of a local education agency and places a student in a private facility in another district, the local education agency where the parent resides shall have the responsibility under these provisions; and

(c) If a private facility, located within the jurisdiction of a local education agency has students placed there by a parent who resides in another district or state, the local education agency in which the private school is located shall have no responsibility for providing special education and educationally related services to those students under these provisions.

Ed 1117.03 RESPONSIBILITIES OF THE LOCAL EDUCATION AGENCY

(a) The local education agency shall provide private school students with:

(1) A genuine opportunity for equitable participation in IDEA funded program benefits; and

(2) An opportunity to participate in IDEA funded program benefits in a manner that is consistent with their number and their needs.

(b) In quality, scope, and opportunity for participation, the IDEA funded program benefits that the local education agency provides for private school students shall be comparable to the IDEA funded program benefits that the local education agency provides for students enrolled in public schools.

(c) If a local education agency uses IDEA funds for public school students in a particular attendance area or grade or age level, the local education agency shall ensure equitable opportunity for participation by students enrolled in a private school who:

(1) Have the same needs as public school students to be served; and

(2) Are in that attendance area or age or grade level.

(d) If the needs of private school students are different from the needs of students enrolled in public schools, a local education agency shall provide IDEA funded program benefits for the private school students that are different from the benefits the local education agency provides for the public school students.

Ed 1117.04 LEVEL OF EXPENDITURE

(a) Subject to paragraph (b) below, a local education agency shall spend the same average amount of IDEA program funds for a private school student who receives benefits under the program as it spends for a student enrolled in public school who receives benefits under the program.

(b) The local education agency shall spend a different average amount of program benefits for private school students if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

Ed 1117.05 CONSULTATION WITH REPRESENTATIVES OF PRIVATE SCHOOL STUDENTS

(a) The local education agency shall consult with representatives of private schools in which students under its jurisdiction as specified in Ed 1117.02 are enrolled during all phases of the development and design of the project covered by the IDEA application. Such consultation shall include the exchange of information concerning:

(1) Which students shall receive benefits under the project;

(2) How the students' needs shall be identified;

(3) What benefits shall be provided;

(4) How the benefits shall be provided; and

(5) How the project will be evaluated.

(b) The local education agency shall consult with representatives, such as principals, directors, or their designees, of private schools in which students under its jurisdiction as specified in Ed 1117.02 are enrolled before the local education agency makes any decision that affects the opportunities of private school students to participate in the IDEA funded project.

(c) The local education agency shall give the private school representatives an opportunity to fully and candidly express their views regarding each matter subject to the consultation requirements in (a) and (b) above.

Ed 1117.06 NEEDS, NUMBER OF STUDENTS, TYPES OF SERVICES. The local education agency shall use the same criteria to determine the needs of private school students, the number of private school students who will participate in the project, and the benefits to be provided to private school students as it uses for public school students participating in the IDEA funded program.

Ed 1117.07 INFORMATION THE LOCAL EDUCATION AGENCY SHALL SUBMIT IN AN APPLICATION

(a) With respect to private school students, a local education agency's application as required by Ed 1129.01 shall contain:

(1) A description of how the local education agency shall meet the federal requirements for participation of these students;

(2) The number of students who have been identified as eligible for IDEA funded program benefits;

(3) The number of students who shall receive benefits under the IDEA funded program;

(4) The basis the local education agency used to select the students;

(5) The manner and extent to which the local education agency consulted with representatives of private schools in which these students are enrolled as required by Ed 1117.05;

(6) The places and times that students will receive benefits under the program; and

(7) The differences, if any, between the IDEA funded program benefits the local education agency shall provide to public and private school students and the reasons for the differences.

Ed 1117.08 SEPARATE CLASSES PROHIBITED

(a) A local education agency shall not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(1) The classes are at the same site; and

(2) The classes include students enrolled in public schools and private school students.

Ed 1117.09 USE OF FUNDS

(a) A local education agency shall not use IDEA program funds to:

(1) Meet the needs of a private school;

(2) Finance the existing level of instruction in a private school;

(3) Meet the general needs of students enrolled in a private school; or

(4) Otherwise benefit the private school.

(b) The local education agency shall use IDEA program funds to meet the specific needs of private school students.

Ed 1117.10 PERSONNEL

(a) A local education agency may use IDEA program funds to make public school personnel available in private facilities:

(1) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(2) If those benefits are not normally provided by the private school.

(b) A local education agency may use IDEA program funds to pay for the services of an employee of a private school if:

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

Ed 1117.11 EQUIPMENT AND SUPPLIES

(a) The local education agency shall keep title and administrative control of all equipment and supplies that the local education agency acquires with IDEA program funds.

(b) The local education agency may place equipment and supplies in a private school for the period of time needed for the project and shall ensure that the equipment or supplies placed in a private school:

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(c) The local education agency shall remove equipment or supplies from a private school if:

(1) The equipment or supplies are no longer needed for the purpose of the project; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than project purposes.

Ed 1117.12 **CONSTRUCTION.** A local education agency shall ensure that IDEA program funds are not used for the construction, re-construction, or maintenance of private school facilities.

CHAPTER Ed 1119

REQUIREMENTS FOR THE DEVELOPMENT AND OPERATION OF PROGRAMS FOR STUDENTS WITH EDUCATIONAL DISABILITIES

Ed 1119.01 PROGRAMMING IN REGULAR CLASS ENVIRONMENTS

(a) When students with educational disabilities participate in regular education classes or programs, the integrity and appropriateness of the curricula of the classes or programs shall be maintained for both the students with educational disabilities and the students who do not have educational disabilities.

(b) Prior to the participation of a student with educational disabilities in a regular class or program the local education agency shall, based on the student's individualized education program, identify any expectations for the student with disabilities that are different from the range of expectations for other students and shall, according to the nature and severity of the student's disability, provide the student and/or teachers with additional help such as:

(1) Interpreters;

(2) Aides;

(3) Consultative help for the regular teacher;

(4) In-service training for the regular teacher;

(5) Specialized orientation for the student with educational disabilities and/or the students who do not have educational disabilities;

(6) Note takers and readers; and

(7) Other supportive equipment and help delineated in the student's individualized education program.

Ed 1119.02 ESTABLISHMENT OF EDUCATION PROGRAMS FOR STUDENTS WITH EDUCATIONAL DISABILITIES

(a) As required by RSA 186-C:10, "a school district shall establish an approved program or programs for educationally disabled children, or shall enter into cooperative agreements with other school districts to provide approved programs for students with educational disabilities, or shall pay tuition to such an approved program maintained by another school district or by a private organization. Eligibility for participation in an approved program of special education shall be determined by the school board of the school district," in accordance with Chapter Ed 1100.

(b) Each program maintained by a school district, private organization, or another governmental agency shall provide for interaction with students of similar age and/or development who do not have educational disabilities to the maximum extent appropriate considering the nature and severity of the educational disability.

(c) A program for students with educational disabilities may include but shall not be limited to:

(1) Instructional services including vocational education when required by the students the program is designed to serve;

(2) Educationally related services provided that if a student with educational disabilities does not need special instruction specifically designed to meet his/her unique needs, there can be no provision of related services. Related services can not be provided in isolation or without special instruction;

(3) Transportation services to all students with educational disabilities whose individualized education program so requires;

(4) Room and board when the school district boards a student near the place where instruction is to be furnished; and

(5) Specialized equipment and materials.

(d) Instruction shall be provided to implement the individualized education program of a student with educational disabilities who is confined to a hospital or institution for medical treatment. In such cases, the local school district shall not be required to pay for medical services except as required by Ed 1102.11(d).

(e) A home-based program for elementary and secondary students shall be provided in accordance with Ed 1115.03 and Ed 1115.04.

(f) A program for preschool students may be home-based, school-based, or a combination of both. The preschool program shall consist of special education or special education and educationally related services, the specific manner and duration of which shall be provided according to the preschool student's individualized education program.

Ed 1119.03 CURRICULA

(a) The local education agency shall ensure that, to the maximum extent appropriate, every student with educational disabilities has full access to the district's full elementary and secondary curricula including vocational training.

(b) To the extent that the district's curricula require modification to meet the unique needs of students with educational disabilities the local education agency shall:

(1) Adapt or modify equipment;

(2) Use interpreters or other modes of communication;

(3) Adapt or modify instructional materials;

(4) Adapt, modify, or use alternative teaching methods; and

(5) Make other modification as required by the student's individualized education program.

(c) When the regular school curricula with modification are inadequate to meet the needs of students with educational disabilities, special education curricula shall be developed.

(d) A student's individualized education program shall not be considered as a complete or total curriculum for a special education program.

Ed 1119.04 EQUIPMENT, MATERIALS AND ASSISTIVE TECHNOLOGY

(a) Each local education agency shall provide appropriate instructional equipment and materials adequate to implement the individualized education program for each student with educational disabilities.

(b) Each local education agency shall monitor the proper functioning of hearing aids, low vision aids, and other orthotic and prosthetic devices and adaptive equipment used by students with educational disabilities in school.

(c) Each local education agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student with an educational disability if required as part of the student's special education, related services or supplementary aids and services.

Ed 1119.05 CLASS SIZE AND AGE RANGE

(a) Students in pre-school programs shall be grouped by developmental and achievement levels with an age and/or development range of not more than 3 years.

(b) The following shall apply to a self-contained special education class:

(1) A self-contained special education class shall be considered one in which students with educational disabilities spend more than 50% of their day in a single environment;

(2) Self-contained special education classes for students with educational disabilities shall not be approved when the enrollment exceeds 8 at the early childhood, elementary, junior and/or senior high school level except that the enrollment may be increased to no more than 12 if additional personnel are assigned to the program;

(3) Regardless of the specific teacher-student ratio, each program shall provide credentialed personnel and educationally related services according to the individualized education program of each student. This means that a teacher-student ratio of less than 1:8 or 1:12 shall be provided if the need presented by the severity of disabilities so warrants;

(4) Students in self-contained special education classes on the elementary level shall have an age range of not more than 4 years; and

(5) On the junior and senior high school levels, students in self-contained classes shall have an age range of not more than 4 years and an academic range of not more than 5 years.

(c) The following shall apply to resource rooms:

(1) Resource rooms shall serve for no more than 50% of the student's school day as an adjunct to assignment to regular educational programs for students with educational disabilities;

(2) Students with educational disabilities shall not receive all of their academic training in resource rooms;

(3) The total number of students with educational disabilities being served in the resource room at any given time shall not exceed 12 students without the assistance of support personnel. This shall not preclude the presence of some additional students working on independent projects; and

(4) It shall be the responsibility of the local education agency to ensure that the abilities of the resource room teacher match the needs of the students with educational disabilities and that the resource room teacher is capable of implementing the individualized education programs of all the students with educational disabilities assigned to the resource room.

Ed 1119.06 FACILITIES AND LOCATION

(a) Classrooms and other instructional areas for students with educational disabilities shall be located in a building with students of similar chronological age.

(b) Physical space for classrooms and other instructional program areas for students with educational disabilities shall be comparable to physical space for classrooms and other instructional programs for other students.

(c) Classrooms and other instructional areas for students with educational disabilities shall be located in educational facilities that, in the judgment of the special education placement team, are in the least restrictive environment.

(d) The physical space used for classrooms and other instructional programs for students with educational disabilities shall be of sufficient size to accommodate equipment necessary to implement the students' individualized education programs and provide for all other learning activities.

Ed 1119.07 QUALIFICATIONS OF SERVICE PROVIDERS

(a) In accordance with rules established by the New Hampshire State Board of Education and administered by the Bureau of Credentialing, teachers of students with educational disabilities, prior to employment, shall have New Hampshire certification appropriate for the educational disability/disabilities of the students to be served.

(b) Paraprofessional personnel shall:

(1) Work under the supervision of an appropriately certified professional;

(2) Be supervised by the professional under whom they work as often as deemed necessary but no less than once each week;

(3) Implement a plan designed by the supervising professional; and

(4) Monitor the behavior of students with whom they are working.

(c) Paraprofessional personnel shall not be expected to:

(1) Design programs;

(2) Evaluate the effectiveness of programs; or

(3) Assume responsibilities of a teacher/substitute teacher.

Ed 1119.08 DIPLOMAS. Local school boards shall ensure that all students with educational disabilities have equal opportunity to complete a course of studies leading to a high school diploma.

Ed 1119.09 SUPERVISION AND ADMINISTRATION

(a) Students with educational disabilities shall be entitled to continue in an approved program until such time as the student has acquired a high school diploma or has attained the age of 21, whichever occurs first, or until the school district responsible for developing the student's individualized education program determines that the student no longer requires special education in accordance with Ed 1107.07.

(b) The school board of every district shall provide standard schools for at least 180 days in each year at such places in the district as will best serve the interests of education and give all students within the district as nearly equal advantages as practicable.

(c) Students with educational disabilities in need of extended school year programming shall be so provided in accordance with Ed 1111.

(d) The local education agency shall designate the individuals responsible for supervision of students with educational disabilities. Personnel responsible for these activities shall include the superintendent of schools or his/her representative, the building principal, and special supervisors.

Ed 1119.10 THE LENGTH OF THE SCHOOL DAY

(a) For the students with educational disabilities, the school day shall be a minimum of 5 1/4 hours, including recess but not lunch, except in those cases where lunch activities are included in the student's individualized education program.

(b) When, due to a student's limited physical and/or emotional stamina, the special education placement team recommends a school day of less than 5 1/4 hours, written consent shall be obtained from the superintendent of schools and the parent prior to implementing a shortened school day. A copy of the written consent shall be sent to the state director of special education, a copy given to the parent, and another placed in the student's school records.

(c) The length of the school day and school year for preschool students with educational disabilities shall be determined by their individualized education program.

Ed 1119.11 SUSPENSION OF STUDENTS WITH EDUCATIONAL DISABILITIES

(a) The superintendent of schools, or his/her representative as designated in writing, shall be authorized to suspend students with educational disabilities in accordance with appropriate state or federal law.

(b) In suspensions lasting beyond 10 days, the special education placement team shall immediately review the current individualized education program and placement of the student with educational disabilities to determine whether the behavior leading to the suspension is a direct result of the student's educational disabilities.

(c) If the special education placement team determines that the behavior leading to the suspension is a direct result of the student's educational disabilities, the student's individualized education program and/or placement shall be modified.

CHAPTER Ed 1121
SURROGATE PARENTS

Ed 1121.01 DEFINITIONS

(a) "Student", for the purposes of Part Ed 1121, means a student with educational disabilities as defined in RSA 186-C:2 or a child from birth to age 21 who has been referred to a local education agency for an evaluation and determination of whether the child has an educational disability.

(b) "Unavailable" means" "unavailable parent" as defined in RSA 186-C:14 II(c) namely a parent or guardian whose location is unknown or who is otherwise unable to act as the child's advocate in the educational decision-making process.

Ed 1121.02 AUTHORITY

(a) Pursuant to RSA 186-C:14 III and RSA 186-C:14 IV, the determination of the need for and the appointment of surrogate parents shall be the responsibility of the Commissioner of Education.

(b) In order to protect the educational rights of students with disabilities, a surrogate parent shall be appointed when the student's parent or guardian is not known or is unavailable, the student is a ward of the state, or a court has issued a written order for a surrogate parent.

Ed 1121.03 INITIATING A REQUEST FOR APPOINTMENT OF A SURROGATE PARENT

(a) Any employee of a local education agency, department of education, residential school or hospital, any physician, any judicial officer, or any other person who knows or believes that a student's parent or guardian is not known, or is unavailable, or that the student is a ward of the state, may initiate the appointment of a surrogate parent.

(b) The process for appointment of a surrogate parent shall be initiated by submitting a written referral with the superintendent of schools or his/her designee as identified in the local education agency application.

(c) A copy of the referral shall be sent to the Commissioner of Education or his/her designee.

Ed 1121.04 INVESTIGATION AND DETERMINATION OF THE NEED FOR A SURROGATE PARENT

(a) The superintendent of schools or his/her designee shall conduct an investigation to determine whether the student is in need of a surrogate parent.

(b) Procedures used to determine whether or not the student's parent or guardian is in fact unknown or unavailable, or if the student is a ward of the state, shall include but not be limited to, sending a written notice, by certified mail, of the need for parental participation in the special education process to the last known address of the parent or guardian. Such a notice shall include:

(1) A request for the parent or guardian to participate in the special education process for the student;

(2) A description of parental rights; and

(3) A request that the parent state his or her availability to the superintendent of schools or his/her designee within 14 days of receipt of the certified letter.

(c) A parent or guardian shall be considered unknown when there is no written record of the existence of such a person available to the superintendent of schools or his/her designee.

(d) A parent or guardian shall be considered unavailable when:

(1) The public agency cannot discover the whereabouts of the parent as documented by a record of its attempts to contact the parent or guardian, such as:

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence, including certified letters, sent to the parent or guardian and any response received; or

c. Detailed records of visits made to the home or place of employment of the parent and the results of those visits.

(2) The parent or guardian notifies the school district in writing that:

a. He/she does not want or is unable to act as the student's educational decision-maker at this time;

b. Requests the appointment of a surrogate parent for the student at this time; and

c. Understands that he/she may resume responsibility as the student's educational decision-maker upon written notification to the school district.

(e) A parent or guardian shall also be considered unavailable when a court has determined that the student is in need of a surrogate parent as documented by a written court order.

(f) The student shall be determined to be a ward of the state under this section when:

(1) The parent or guardian's rights have been terminated or relinquished as documented through legal records or the parent or guardian is deceased, and,

(2) The state or a state agency has been granted legal guardianship of the student, as documented in legal records.

(g) The superintendent of schools or his/her designee shall, based on the evidence gathered during the investigation, determine whether the student is in need of a surrogate parent within 30 days following receipt of the original referral for a surrogate.

Ed 1121.05 REQUESTING APPOINTMENT OF A SURROGATE PARENT

(a) If it is determined that a student does not need a surrogate parent, the superintendent of schools or his/her designee shall notify the Commissioner of Education or his/her designee in writing of that determination and place a copy of the notification in the student's school record.

(b) If it is determined that a student needs a surrogate parent the superintendent of schools or his/her designee shall submit a written request that the Commissioner of Education or his/her designee appoint a surrogate parent.

(c) The written request for appointment of a surrogate parent shall include:

(1) The date request for appointment of a surrogate parent is made;

(2) The name, title, agency name, address and telephone number of the following people:

a. The person requesting appointment to be made;

b. The student's Division for Children, Youth and Families caseworker;

c. The student's guardian ad litem/attorney;

d. The student's adult caretaker and/or the student's foster parent;

e. The student's biological mother and biological father, if known, living and parental rights have not been relinquished or terminated;

f. The student's guardian, if any;

g. The contact persons of the student's liable/receiving school district and sending, liable for reimbursement district, if any;

h. The contact person of the student's current educational placement; and

i. The contact person of any other agency or party having jurisdiction over the student.

(3) Information identifying the student including:

a. The student's name and date of birth;

b. The student's SPEDIS number if one has been assigned;

c. The student's current address; and

d. The name and address of the facility where the student is currently going to school.

(4) A statement whether the student is in evaluation status or has already been determined to have educational disabilities;

(5) A statement of the student's legal relationship/custody status with the Division for Children, Youth and Families;

(6) A sworn affidavit by the superintendent of schools or his/her designee attesting that the school district investigated the student's need for a surrogate parent and determined that the student's parent or guardian is unknown or unavailable, that the student is a ward of the state, or a court has issued a written order for a surrogate parent and that the student is therefore in need of a surrogate parent; and

(7) Documentation of efforts to contact the parent or guardian as described in Ed 1121.04.

Ed 1121.06 APPOINTMENT

(a) If the Commissioner of Education or his/her designee finds that the materials submitted by the superintendent of schools or his/her designee are complete and documents that the student is in need of a surrogate parent he/she shall appoint a surrogate parent who shall represent the student in the educational decision-making process.

(b) The current residence of the surrogate parent shall be of no relevance in determining the student's district of residence or liability.

(c) Appointment of surrogate parents shall be effective until the student reaches 18 years of age unless:

(1) The student requests in writing that the Commissioner of Education or his/her designee extend the original appointment until the student graduates from high school or reaches 21 years of age, whichever occurs first;

(2) The student is determined to be incapacitated under RSA 464-A, Guardians and Conservators, and the guardian is determined to be unavailable under Ed 1121.04; or

(3) The surrogate parent resigns, dies, or is removed pursuant to Ed 1121.06(d).

(d) In the interest of the student, the Commissioner of Education or his/her designee shall remove a surrogate parent:

(1) Who has not fulfilled the responsibilities of a surrogate parent; or

(2) Has a conflict of interest with the student's interests.

(e) The Commissioner of Education or his/her designee shall terminate the appointment of a surrogate parent when:

(1) A parent or guardian becomes known, is located, rescinds his or her request or consent to have a surrogate parent appointed and will assume educational decision-making or becomes otherwise available;

(2) The student ceases to be a ward of the state; or

(3) The adult student over 18 rescinds his/her request for the appointment of a surrogate parent and will assume educational decision-making for him/herself.

(f) The Commissioner of Education or his/her designee shall appoint a successor surrogate parent in the same manner and for the same period of time as previously provided when:

(1) The surrogate parent resigns; or

(2) When a surrogate parent has been removed pursuant to Ed 1121.06(d).

Ed 1121.07 SELECTION OF SURROGATE PARENTS

(a) The Department of Education shall select individuals to be available to serve as surrogate parents provided such individuals:

(1) Have volunteered to serve as a surrogate parent;

(2) Have submitted a signed and dated written application to the Department of Education that includes:

a. The applicant's name;

b. The applicant's residence address and mailing address, if different;

c. The applicant's daytime telephone number and evening telephone number;

d. The applicant's employer's name;

e. Languages the applicant is conversant in;

f. The applicant's experience with children including foster children or students with disabilities;

g. The applicant's experience with the educational process;

h. Whether the applicant is available to attend daytime meetings;

i. The applicant's willingness to be surrogate parent to more than one student at a time;

j. The names of particular students to be surrogate parent for, if relevant;

k. The applicant's preference regarding geographical location or disability of students; and

l. A statement of the applicant's agreement to take training, if not already trained;

(3) Have provided the names and addresses of 3 non-relative references to the Department of Education;

(4) Have favorable letters of reference submitted to the Department of Education from those named in (3) above and the individuals conducting the training for surrogate parents attesting to the volunteer's suitability to serve as an educational decision-maker on behalf of a student;

(5) Have knowledge and skills that ensure adequate representation of the student, demonstrated by completion of training, or have agreed in writing to take training when it is offered;

(6) Have satisfactorily completed training to serve as a surrogate parent provided by the Department of Education as described in Ed 1121.08.

(7) Be 21 years of age or over;

(8) Have agreed in writing to protect the confidentiality of any records of the student to whom the volunteer is appointed surrogate parent;

(9) Have agreed in writing to act in the interest of the student to protect his/her right to a free appropriate public education;

(10) Have agreed in writing to serve as a surrogate parent from the date of appointment until the date of termination of appointment or until 30 days after notifying the Commissioner of Education or his/her designee of the desire to end the surrogate parent relationship.

(11) Have no interest that conflicts with the interest of the student he/she represents; and

(12) Not be an employee of a public agency which is involved in the education or care of the student.

(b) A person who otherwise qualifies to be a surrogate parent shall not be considered an employee of the public agency solely because he/she has been appointed by the agency to serve as a surrogate parent.

Ed 1121.08 TRAINING OF SURROGATE PARENTS

(a) The Department of Education shall maintain a registry of eligible persons who are trained to serve as surrogate parents.

(b) The Department of Education shall provide for the training of persons who have been selected to serve as surrogate parents.

(c) Training of surrogate parents shall include:

(1) Study of legislative mandates for surrogate parents;

(2) An overview of disabling conditions;

(3) An overview of state and federal legislation regarding special education;

(4) An overview of New Hampshire's special education process including evaluation procedures, the determination of educational disability, development of the individualized education program, selection of special education placements, and other decision-making;

(5) Development of communication skills; and

(6) Information about resources available to surrogate parents and students with educational disabilities;

(d) Training for surrogate parents shall conclude with a final exam on which the adult volunteer shall earn a passing grade of 70%.

Ed 1121.09 RESPONSIBILITIES OF SURROGATE PARENTS

(a) The surrogate shall represent a student with educational disabilities in all matters and in all proceedings relating to the identification, evaluation, and educational placement of the student and provision of a free, appropriate public education.

(b) Surrogate parents shall only be liable to the student for civil damages resulting from acts or omissions constituting gross, willful, or wanton negligence.

(c) Except as provided in Ed 1121.06, a surrogate parent shall represent the student until the student reaches the age of 18.

(d) The surrogate parent may ask to end the surrogate parent relationship without cause upon 30 days written notice to the Commissioner of Education or his/her designee, and all interested parties or persons.

(e) A surrogate parent shall not recoup expenses from the local education agency or the Department of Education for any services he/she provides as a surrogate.

Ed 1121.010 SURROGATE PARENTS FOR STUDENTS PLACED IN HOMES FOR CHILDREN, HEALTH CARE FACILITIES, OR STATE INSTITUTIONS

(a) Notwithstanding the requirements of Ed 1121 the following shall apply for students in placements pursuant to RSA 169-B, RSA 169-C or RSA 169-D. Upon DCYF or DYDS referral meeting the requirements of Ed 1121.03, the Department of Education shall appoint a surrogate parent in accordance with Ed 1121.06 except as noted below:

(1) The process for appointment of a surrogate parent shall not exceed 45 days from the date on which the Department of Education receives the request for appointment.

(2) If a parent or guardian objects to the appointment of a surrogate parent, the decision whether or not to appoint a surrogate parent shall be made within 55 days of the date on which the superintendent of schools or Department of Education received the referral.

(3) In all instances where information from the liable school district is necessary to make a determination whether a surrogate parent should be appointed, it shall be the responsibility of the liable school district to provide, in a timely manner, all the information necessary to complete the process of determining whether a surrogate parent should be appointed.

CHAPTER Ed 1123
CONFIDENTIALITY OF INFORMATION

Ed 1123.01 APPLICABILITY

(a) This part shall apply to all educational agencies or institutions to which funds are made available under any federal programs for which the U.S. Secretary of Education has administrative responsibility as specified by law.

(b) Funds referred to in paragraph (a) above shall be considered to have been made available if:

(1) They are provided by grant, contract, subgrant, or subcontract; or

(2) They are provided to students attending the agency or institution and the funds are paid to the agency or institution by those students for educational purposes.

(c) This part shall apply to education records of students who are or have been in attendance at the agency or institution which maintains the records.

(d) This part shall not apply to education records that are:

(1) Records of instructional, supervisory, and administrative personnel which:

a. Are in sole possession of the maker; and

b. Are not accessible or revealed to any other individual except a substitute, a person who performs on a temporary basis the duties of the person who made the record;

(2) Records of a law enforcement unit of an educational agency or institution which are:

a. Maintained apart from the records as defined in Ed 1123.02;

b. Maintained solely for law enforcement purposes; and

c. Not disclosed to individuals other than law enforcement officials of the same jurisdiction;

(3) Records relating to an individual who is employed by an educational agency or institution which are made and maintained in the normal course of business;

(4) Records relating to eligible students which are:

a. Created or maintained by a physician, psychologist, psychiatrist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in that capacity;

b. Created, maintained, or used only in connection with the provision of treatment to the student; and

c. Not disclosed to anyone other than individuals providing the treatment, providing that the records can be reviewed by a physician or other qualified professional of the student's choice. Treatment shall not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records at an educational agency which contain only information relating to a person after he/she has left the institution or agency, such as, accomplishments of its alumni; or

(6) Directory information.

Ed 1123.02 DEFINITIONS

(a) "Attendance at an agency or institution" means, but shall not be limited to:

(1) Attendance in person and by correspondence; and

(2) The period during which a person is working under a study program.

(b) "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(c) "Destroy" means to cause the destruction of information in education records.

(d) "Directory information" means "directory information" as defined in 34 CFR 99.3, namely, information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed.

(e) "Disclosure" means permitting access, release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, by electronic means, or by any other means to any party.

(f) "Educational institution" or "educational agency" means any public or private agency or institution which is the recipient of funds under any federal program administered by the U.S. Secretary of Education. The term refers to the agency or institution as a whole, including all its components, such as schools or departments in a university, and shall not be read to refer to one or more of these components separated from that agency or institution.

(g) "Education records" means those records which are:

(1) Directly related to a student;

(2) Collected by an educational agency or institution or by a party acting for the agency or institution;

(3) Maintained by an educational agency or institution or by a party acting for the agency or institution; or

(4) Used by an educational agency or institution or by a party acting for the agency or institution.

(h) "Eligible student" means a student who has attained 18 years of age or is attending an institution of postsecondary education.

(i) "Financial aid" means payment of funds to an individual which is conditioned on a student's attendance at an educational agency or institution.

(j) "Institution of postsecondary education" means an institution which provides education beyond the secondary school level.

(k) "Panel" means the body which will adjudicate cases.

(l) "Party" means an individual, agency, institution, or organization.

(m) "Record" means information or data recorded in any medium, including but not limited to: handwriting; print; tapes; film; computer disks; microfilm; and microfiche.

(n) "Secondary school level" means the educational level, not beyond grade 12, at which secondary education is provided as determined by state law.

(o) "Secretary" means the U.S. Secretary of Education.

(p) "Student" means any individual who is or has been in attendance at an educational institution or agency for whom an educational institution or agency maintains education records.

Ed 1123.03 STUDENT RIGHTS

(a) Except as provided in Ed 1123.03(b) below, and taking into consideration the type or severity of the disability, whenever a student reaches 18 years of age or is attending a postsecondary education institution, the rights accorded to and the consent required of the parent of a student, which are detailed in Ed 1123, shall thereafter only be accorded to and required of the eligible student.

(b) Students age 18 or older or students who are attending a postsecondary education institution shall not be accorded the rights delineated in Ed 1123(a) when a surrogate parent remains appointed in accordance with Ed 1121.06(c).

Ed 1123.04 FORMULATION OF INSTITUTIONAL POLICY

(a) Each educational agency or institution shall formulate and adopt a policy concerning confidentiality of information at the collection, storage, disclosure, and destruction stages that is consistent with the requirements of Ed 1123 and includes:

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(1) Informing parents and eligible student of their rights as required by Ed 1125.04;

(2) Permitting parents of students or eligible students to inspect and review education records of the student;

(3) A description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a photocopy of such records including a statement that copies shall not be denied to parents when failure to provide those copies would effectively prevent them from exercising the right to inspect and review the records;

(4) Listing the types and locations of education records maintained by the educational agency or institution and the title and address of the official responsible for said records;

(5) Describing the training that shall be provided for all persons collecting or using personally identifiable information on students with educational disabilities regarding the educational agency's or institution's policies and procedures for maintaining the confidentiality of personally identifiable information and the requirements of Ed 1123;

(6) Stating the criteria the educational agency or institution shall use to determine which individuals are "school officials", as well as what the educational agency considers to be a "legitimate educational interest" for the purpose of disclosing personally identifiable information from a student's records;

(7) Listing for public inspection of the names and positions of those current employees within the agency who shall have access to personally identifiable information;

(8) Specifying the personally identifiable information which the educational agency or institution has designated as directory information;

(9) Identifying the name and title of the individual at the agency who is responsible for insuring confidentiality of personally identifiable information;

(10) Maintaining a record of disclosures of personally identifiable information including:

a. The name of all parties who have requested and/or obtained information from the records;

b. The date disclosure was given; and

c. The purpose for which the party is authorized to use the records;

(11) Permitting a parent or eligible student to inspect the disclosure record;

(12) Providing the parent or eligible student with an opportunity to seek the correction of education records;

(13) Complying with a parent's or eligible student's request to inspect and review any education records without unnecessary delay and before any meeting regarding an individualized education program or any hearing relating to the identification, evaluation, or placement of a student with educational disabilities; and

(14) Providing the parents of a student with educational disabilities an opportunity to inspect, obtain copies of, and review all education records with respect to:

a. The identification, evaluation, and educational placement of the child; and

b. The provision of a free appropriate public education to the child.

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing, and copies shall be made available upon request to parents of students and eligible students.

Ed 1123.05 ANNUAL NOTIFICATION OF RIGHTS

(a) Each educational agency or institution shall give parent or eligible students annual notice to inform them of:

(1) Their rights under the IDEA, the regulations and policies adopted by the educational agency or institution to afford them these rights, and where such policies and regulations may be obtained; and

(2) The right to file complaints concerning alleged failures to comply with policies and regulations concerning the confidentiality of information.

(b) Agencies and institutions of elementary and secondary education shall ensure that the notice in (a) above conforms to the requirements of Ed 1125.03.

Ed 1123.06 LIMITATIONS ON WAIVERS

(a) Subject to limitations, a parent of a student, or a student may waive any of his or her rights but said waiver shall not be valid unless it is in writing and signed by the parent or student.

(b) An educational agency or institution shall not require a parent or eligible student to waive his or her rights. This shall not preclude an agency or institution from requesting such a waiver.

(c) A student at, or a person applying to, a postsecondary education institution may waive his/her rights to review confidential letters and statements of recommendations described in Ed 1123.09(a)(2), except that a waiver may apply to confidential letters and statements if:

(1) The applicant is, upon request, notified of the names of all individuals providing letters or statements;

(2) The letters or statements are used only for the purpose for which they were originally intended; or

(3) The waiver is not required by the agency as a condition of admission or receipt of any other service or benefit from the agency or institution.

(d) All waivers under (c) above, shall be executed by the individual regardless of age rather than the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of education records and persons or institutions.

(f) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(g) A waiver under this section shall be in writing.

(h) If a parent or student executes a waiver it may be revoked by the student anytime after he or she becomes an eligible student.

Ed 1123.07 FEES

(a) An educational agency or institution may charge a fee for copies of education records which are made for parents or eligible students provided such a fee does not effectively prevent the parents or eligible students from exercising their right to inspect or review those records.

(b) The education agency or institution shall not charge a fee to search for or to retrieve the education records of a student.

Ed 1123.08 RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

(a) Each educational agency or institution shall permit a parent or eligible student who is, or has been, in attendance at the agency or institution to inspect and review the education records of the student; or be informed of the specific information that is contained in the student record.

(b) Each educational agency or institution shall provide a parent or eligible student with:

(1) A statement of the procedure to be followed by a parent or eligible student who requests to inspect and review the records of the student;

(2) A schedule of fees for copies, if the educational agency or institution charges parents or eligible students for making copies of records;

(c) Each educational agency or institution shall comply with requests to inspect and review records without unnecessary delay and in no event longer than 45 days after said request has been made.

(d) The right to inspect and review education records shall include:

(1) Reasonable requests for explanations and interpretations of the records; and

(2) Obtaining copies of said records, where failure of the agency or institution to provide copies would effectively prevent a parent the right to inspect and review education records;

(e) The educational agency or institution shall presume that either parent of the student has the authority to inspect records of the student unless the agency or institution has been provided evidence that there is a legally binding instrument, state law or court order governing such matters as divorce, separation, or custody, which provides to the contrary.

(f) Authorized representatives of the parent shall have the right to inspect and review records which the parent has a right to review or inspect.

(g) If the education records contain information on more than one student, the parent or eligible student shall inspect and review only the specific information which pertains to that student.

Ed 1123.09 LIMITATIONS ON THE RIGHT TO REVIEW EDUCATION RECORDS AT THE POSTSECONDARY LEVEL

(a) An institution of postsecondary education shall not be required to permit a student to inspect and review:

(1) Financial records and statements of their parents;

(2) Confidential letters and statements of recommendation which were placed in the records prior to January 1, 1975, provided:

a. The letters were solicited with the assurance of confidentiality; and

b. The letters are used only for the purpose for which they were intended; or

(3) Confidential letters and statements of recommendation, provided that the student has waived his/her right to inspect and review these, which were placed in the education records after January 1, 1975 respecting:

a. Admission to an educational institution;

b. An application for employment; or

c. Receipt of an honor or honorary recognition.

Ed 1123.10 LIMITATION ON DESTRUCTION OF EDUCATION RECORDS

(a) An educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review them.

(b) Explanations placed in the education record shall be maintained as part of the record as long as the record or contested portion is maintained.

(c) The record of access required shall be maintained for as long as the education record to which it pertains is maintained.

(d) The educational agency or institution shall inform parents of students with educational disabilities when personally identifiable information collected, maintained, or used to provide an appropriate educational program is no longer needed to provide educational services to the student. Except for information in (e) below, information that is no longer needed shall be destroyed at the request of parent.

(e) The student's name, address, telephone number, his/her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Ed 1123.11 REQUEST TO AMEND EDUCATION RECORDS

(a) The parent or eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy of the student may request that the records be amended.

(b) The educational agency or institution shall decide whether to amend the records in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution refuses to amend the records it shall so inform the individual and at the same time advise him/her of his/her right to a hearing pursuant to Ed 1123.11(d) below.

(d) An educational agency or institution shall, on request, conduct a hearing in order for a parent or eligible student to challenge the contents of a student's education record to ensure the information contained therein is not inaccurate, misleading or otherwise in violation of the student's privacy or other rights of students. Said hearing:

(1) Shall be held within a reasonable time after the request, and the parent or eligible student shall be notified in advance of the date, time and place of the hearing;

(2) May be conducted by any party, including an official of the educational agency, who does not have a direct interest in the outcome of the hearing;

(3) Shall give the parent or eligible student the opportunity to present evidence relevant to the issue and allow assistance by a person of his/her choice, including an attorney; and

(4) Shall result in a written decision within a reasonable time by the agency or institution that shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(e) If, as a result of the hearing, the educational agency or institution decides the information is inaccurate, misleading, or otherwise in violation of the privacy of the student, the agency shall amend the records or destroy information that is no longer needed to provide education services and will inform the parent or eligible student in writing of said amendment or destruction.

(f) If, as a result of the hearing, the educational agency or institution decides the information is not inaccurate, misleading, or otherwise in violation of the privacy of the student, it shall inform the parent or eligible student of the right to place in the record a statement commenting on the information or setting forth reasons for disagreeing with the decision of the agency or institution. Such explanation shall be:

(1) Maintained as part of the record for as long as the record is maintained by the agency or institution.

(2) Disclosed if the education record or portion thereof is disclosed to any party.

Ed 1123.12 PRIOR CONSENT FOR DISCLOSURE REQUIRED

(a) Except when the disclosure is to a parent or the student himself/herself or is directory information, an educational agency or institution shall obtain written consent of the parent or eligible student before disclosing personally identifiable information from a student's education record to any party, other than officials of participating agencies, unless authorized to do so under these regulations.

(b) An educational agency or institution shall obtain written consent of the parent or eligible student before personally identifiable information from a student's education record is used for any purpose other than meeting a requirement under this part.

(c) Whenever written consent is required, the agency or institution shall presume that the parent or eligible student giving the authority has the power to do so, unless the agency has been provided with evidence that there is a legally binding instrument, state law, or court order governing such matters as divorce, separation or custody which provides to the contrary.

(d) The required written consent shall be signed and dated by the parent or eligible student and shall include:

(1) A specification of the records to be disclosed;

(2) The purpose of the disclosure; and

(3) The party or class of parties to whom the disclosure may be made.

(e) When a disclosure is made, a copy of the record which is disclosed shall be made available to the parent or eligible student upon request.

(f) If a parent of a student with educational disabilities or the eligible student refuses to provide consent to release personally identifiable information, the local education agency shall initiate a court proceeding to obtain a judge's order if it still wishes to disclose the information.

Ed 1123.13 PRIOR CONSENT FOR DISCLOSURE NOT REQUIRED

(a) Personally identifiable information about a student may be disclosed without written consent if or when the disclosure is:

(1) To other school officials, including teachers, within the institution or agency who have been determined to have a legitimate educational interest by the educational agency or institution;

(2) To officials of another school in which the student seeks or intends to enroll;

(3) To authorized representatives of:

a. The Comptroller General;

b. The U.S. Secretary of Education; and

c. State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received;

(5) To state and local officials to whom information is specifically required to be reported by New Hampshire statute adopted prior to November 19, 1974.

(6) To organizations conducting studies on behalf of educational agencies or institutions for the purpose of developing, validating, or administering student aid programs and improving instruction provided that:

a. Said studies are to be conducted in a manner which shall not permit the personal identification of students and their parents by individuals other than representatives of the organization conducting the study; and

b. The information shall be destroyed when it is no longer needed for the purposes of the study;

(7) To accrediting organizations in order to carry out their accrediting function;

(8) To parents of a dependent student as defined in the Internal Revenue Code of 1954, section 152;

(9) To comply with a judicial order or lawfully issued subpoena, provided that the educational agency or institution notifies the parent or student of the order or subpoena in advance of compliance; or

(10) To appropriate parties in a health or safety emergency.

(b) The provisions of Ed 1123.16 shall not be construed to require or preclude disclosure of any personally identifiable information from the records of a student by an educational agency or institution to the parties in paragraph (a) of this section.

Ed 1123.14 RECORD OF DISCLOSURES REQUIRED TO BE MAINTAINED

(a) Each agency or institution shall, for each request for and each disclosure of personally identifiable information from education records of a student, maintain a record kept with the student's records which indicates:

(1) The name of all parties who have requested and/or obtained information from the records;

(2) The date disclosure was given; and

(3) The purpose for which the party is authorized to use the records;

(b) Paragraph (a) above shall not apply to disclosures to parents or eligible students, disclosures pursuant to written consent of a parent or eligible student, disclosures to school officials, or disclosures of directory information.

(c) The record of disclosures shall be made available for inspection:

(1) By the parent or the eligible student;

(2) By the school official and his or her assistants responsible for the custody of the records; or

(3) For the purpose of auditing the record-keeping procedures of the educational agency or institution by the authorized parties.

Ed 1123.15 LIMITATION ON REDISCLOSURE

(a) An agency or institution may disclose personally identifiable information from education records of a student on the condition that the party to whom the information is disclosed shall not disclose the information to any other party without prior written consent of the parent or eligible student.

(b) Information disclosed to an agency or institution may be used by its officers, but only for the purpose for which the disclosure was made.

(c) Paragraph (a) of this section shall not preclude an agency from disclosing information after written consent has been given with the understanding that the information will be redisclosed, provided that the record-keeping requirements are met.

(d) An agency or institution shall, except for the disclosure of directory information, inform the party to whom a disclosure is made of the requirements set forth in this section.

Ed 1123.16 CONDITIONS FOR DISCLOSURE TO OFFICIALS OF OTHER SCHOOLS AND SCHOOL SYSTEMS

(a) An educational agency or institution transferring the education records of a student who intends to enroll in another school shall attempt to notify the parent or student

of the transfer of records at the last known address of the parent or eligible student except when the transfer is initiated by the parent or eligible student at the sending agency or institution.

(b) When the agency or institution includes a notice in its policies and procedures that it forwards education records on request to a school in which a student seeks or intends to enroll, the agency or institution shall not have to provide any further notice of the transfer.

(c) An educational agency or institution transferring records to another school shall provide the parent or student, upon request, with a copy of the records that have been transferred.

(d) If a student is enrolled in more than one school or receives services from more than one school, the 2 schools may disclose information from the records of the student to each other without obtaining written consent, provided they meet requirements of paragraphs (a) through (c) above.

Ed 1123.17 DISCLOSURE TO CERTAIN FEDERAL AND STATE OFFICIALS FOR FEDERAL PROGRAM PURPOSES

(a) Nothing in Chapter Ed 1100 shall preclude authorized representatives of the individuals listed in Ed 1123.13(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs or in connection with enforcement of, or compliance with, the federal legal requirements which relate to these programs.

(b) Except when the consent of a parent or student has been obtained or when the collection of personally identifiable information is authorized, by federal law any data collected by officials in paragraph (a) above shall be protected in a manner which shall not permit the personal identification of students and their parents by other than those officials.

(c) Personally identifiable data used by officials in paragraph (a) above shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with federal legal requirements.

Ed 1123.18 CONDITIONS FOR DISCLOSURES IN HEALTH AND SAFETY EMERGENCIES

(a) An agency or institution may disclose personally identifiable information from education records of a student if such disclosure is necessary to protect the health or safety of the student or other individuals.

(b) In determining whether to disclose personally identifiable information the educational institution or agency shall consider:

(1) The seriousness of the threat to the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties receiving the information are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

Ed 1123.19 CONDITIONS FOR DISCLOSURE OF DIRECTORY INFORMATION

(a) An agency or institution may disclose personally identifiable information from the education records of a student if the information has been designated as directory information.

(b) Each educational agency or institution shall identify the specific personally identifiable information that it shall designate as directory information. These may include but shall not be limited to the student's:

(1) Name, address, or telephone number;

(2) Date or place of birth;

(3) Major field of study;

(4) Participation in officially recognized activities and sports;

(5) Weight and height as a member of athletic teams;

(6) Dates of attendance;

(7) Degrees or awards; and

(8) Most recent educational institution attended;

(c) An agency or institution wishing to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent or eligible student to refuse designation of any or all of the categories of personally identifiable information as directory information; and

(3) The period of time within which the parent or eligible student must inform the agency in writing that such information is not to be designated as directory information with respect to that student;

(d) An agency or institution may disclose directory information of a student no longer in attendance without following the procedures in paragraph (b) above.

CHAPTER Ed 1125
PROCEDURAL SAFEGUARDS

Ed 1125.01 APPLICABILITY. All of the rights and guarantees delineated in Ed 1125 shall apply to parents, legal guardians, surrogate parents, adult students, and local education agencies.

Ed 1125.02 RIGHTS AND RESPONSIBILITIES

(a) The parent shall have the right to appeal any decision of the local school district regarding the identification, evaluation, individualized education program, provision of a free, appropriate public education, or placement of the student with educational disabilities using the procedures delineated in Ed 1128.

(b) The parent shall have the right to file a complaint in accordance with Ed 1127.01(a) to report actions taken by a public agency which are contrary to the provisions of state and federal requirements regarding the education of students with educational disabilities.

(c) Each local education agency shall develop written procedures to ensure the effective implementation of the procedural safeguards described in this section. These written procedures shall be included in the local education agency application.

Ed 1125.03 WRITTEN PRIOR NOTICE

(a) Parent(s) of a student with educational disabilities shall be notified in writing within a reasonable time but not less than 14 days before the local education agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, placement of the student, or the provision of a free, appropriate public education to the student.

(b) The notice shall be:

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent unless clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not written, the local education agency shall take steps to ensure:

(1) That the notice is translated verbally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice; and

(3) There is written evidence that the requirements of (c)(1) and (2) above have been met.

(d) The written notice shall include:

(1) A description of the action proposed or refused by the local education agency, including:

a. An explanation of why the local education agency proposed or refused to take this action;

b. A description of any option the local education agency considered; and

c. The reasons why any options were rejected;

(2) A description of the evaluation procedures, tests, records, and reports upon which the action was based;

(3) A statement fully informing parents of all rights and procedures available under Ed 1107, Ed 1115, Ed 1121, Ed 1123, Ed 1125, Ed 1127, and Ed 1128; and

(4) A description of any other factors which are relevant to the local education agency's proposal or refusal.

Ed 1125.04 CONSENT REQUIRED

(a) The local education agency shall obtain consent from the parent of a student with disabilities prior to:

(1) Conducting a pre-placement evaluation;

(2) Conducting individual evaluations administered for the purpose of further diagnosing a student with educational disabilities;

(3) Making an initial placement of a student with educational disabilities in a program providing special education or special education and educationally related services;

(4) Annual renewal of the placement of a student with educational disabilities in a special education program;

(5) Determining or changing the disability classification; or

(6) Changing the nature or extent of the special education or special education and educationally related services.

(b) Parents of students with educational disabilities shall have 14 days to sign documents.

(c) Local school districts shall advise the parent in writing of:

(1) The necessity of signing documents which describe actions requiring their consent for the purpose of ensuring the timely provision of appropriate educational services; and

(2) Their right to access all of the rights and procedures outlined in this section if they disagree.

(d) Efforts to notify the parent shall include the use of registered mail, documented telephone calls, and home visitations.

(e) The 14-day time limit may be extended if the local education agency and the parent mutually agree to an extension.

Ed 1125.05 PARENTAL REFUSAL OF CONSENT

(a) If the parent informs the district of his or her disagreement, or if they fail to make a decision within the specified time frame, it shall be interpreted as disagreement with the decision or action proposed by the local school district.

(b) If the local education agency feels its action or decision should, in the best interest of the student, be implemented, the local education agency shall initiate a due process hearing as specified in Ed 1128 to obtain the authority to implement its decision.

Ed 1125.06 INDEPENDENT EDUCATIONAL EVALUATIONS AND INDEPENDENT DIAGNOSTIC ASSESSMENTS

(a) The parent of a student with educational disabilities shall have the right to obtain an independent educational evaluation of the student.

(b) The local education agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(c) A parent has the right to an independent educational evaluation at the local education agency's expense if the parent disagrees with an evaluation obtained by the local education agency. However, the local education agency may initiate a hearing under the provisions of Ed 1128 to show that its evaluation is appropriate. If the result of the due process hearing is that the evaluation is appropriate, the parent shall have the right to an independent educational evaluation but not at public expense.

(d) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Shall be considered by the local education agency in any decision made with respect to the provision of a free, appropriate public education to the student with educational disabilities; and

(2) May be presented as evidence at a meeting, hearing, or review regarding that student with educational disabilities.

(e) If the local school board requests an independent educational evaluation, the cost of the evaluation shall be at the local education agency's expense.

(f) If an impartial due process hearing officer requests an independent educational evaluation as part of an impartial due process hearing, the cost of the evaluation shall be at the local education agency's expense.

(g) Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the local education agency uses when it initiates an evaluation.

CHAPTER Ed 1127
COMPLAINT PROCEDURES

Ed 1127.01 FILING A COMPLAINT

(a) Individuals, or organizations may report allegations of actions taken by a public agency which are contrary to the provisions of state and federal requirements regarding the education of students with educational disabilities by filing a complaint.

(b) A complaint shall:

(1) Be written;

(2) Contain a statement that a public agency has violated a state or federal requirement regarding the education of a student with educational disabilities; and

(3) Contain the facts on which the statement is based.

(c) Complaints shall be directed to the Commissioner of Education, 101 Pleasant Street, Concord, New Hampshire 03301.

Ed 1127.02 INVESTIGATION OF COMPLAINTS

(a) The Commissioner of Education shall assign a professional employee of the Department of Education and/or an independent investigator to:

(1) Investigate the alleged complaint including conducting an on-site investigation if necessary;

(2) Provide for negotiations, technical assistance activities, and other remedial action to achieve compliance; and

(3) Issue a written report to the complainant.

(b) The Commissioner of Education shall issue orders to the local school district or public agency with specific timelines for the corrective actions if such actions were found necessary in order to attain compliance.

Ed 1127.03 RESOLUTION OF COMPLAINTS

(a) All complaints shall be resolved within 60 days of receipt of the written complaint. The 60-day time limit shall be extended up to 90 days by the Commissioner of Education when a written request from the parent(s), other parties to the complaint, local superintendent of schools, director of the public agency, or the director of the private organization documents exceptional circumstances that necessitate such an extension.

(b) Any party to a complaint may request a meeting with the Commissioner of Education or his/her designee if the agency or individual has decided that the orders of compliance are inaccurate, invalid, and/or not based on fact. If any party is still aggrieved after meeting with the Commissioner of Education, then that party shall have the right to appeal the Commissioner's orders to the secretary of the U.S. Department of Education. The meeting with the Commissioner of Education shall be within 60 days of receipt of the written complaint.

(c) The sanctions described in Ed 1131 shall be applied as needed to enforce compliance with orders issued to resolve findings and achieve compliance with respect to provision of a free appropriate public education for students with educational disabilities.

Ed 1127.04 PROCEDURE FOR APPEALING ANY NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION DECISION REGARDING THE PROVISION OF A FREE, APPROPRIATE PUBLIC EDUCATION

(a) Local education agencies, parents, other public agencies, other private organizations, and institutions shall have the right to appeal department of education decisions affecting the provision of a free appropriate public education for any student with educational disabilities.

(b) An aggrieved party who feels that a decision made by the Department of Education which affects the provision of a free appropriate public education of a student with educational disabilities is unfair, arbitrary, or capricious, may file a written grievance with the Secretary of the U.S. Department of Education.

(c) The letter of grievance shall be signed by a person duly authorized to represent the aggrieved party and shall:

(1) State the specific nature of the grievance, together with the reasons why the party considers the decision of the Department to be unfair, arbitrary, or capricious; and

(2) The grounds to be relied upon for relief.

CHAPTER Ed 1128
ADMINISTRATIVE DUE PROCESS HEARING PROCEDURE

Ed 1128.01 INTENT CONCERNING IMPARTIAL DUE PROCESS HEARINGS. The State Board of Education, in adopting these administrative rules governing impartial due process hearings, shall require that:

(a) All parties have an equal opportunity to a fair, timely and impartial procedure for resolving disputes. Local school districts and parents are encouraged to utilize all other resources to resolve issues at an early point, if at all possible; and

(b) Every effort shall be made, during all stages of the hearing process, to ensure that all proceedings will be conducted in a fair manner.

Ed 1128.02 PARENT DEFINED FOR PURPOSE OF DUE PROCESS. "PARENT" as used in this part means parent, legal guardian, surrogate parent, or adult student.

Ed 1128.03 HOW TO INITIATE AN ADMINISTRATIVE DUE PROCESS HEARING

(a) The local school district shall provide written notice to parent if it:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) A parent or local school district may initiate an administrative due process hearing on any of the matters described in (a) above.

(c) In order to initiate the administrative due process hearing as provided for by Ed 1128, a parent shall provide written notice to the local education agency of what they are appealing, why they are appealing, and how they would like to see things changed.

(d) In order to initiate the administrative due process hearing provided for by Ed 1128, a local education agency shall provide written notice to the parent of what they are appealing, why they are appealing, and how they would like to see things changed.

(e) If the administrative due process hearing is initiated by a parent, the local education agency shall immediately, but in no case later than 5 days after receiving the written notice required by this section, notify the Commissioner of Education and the local school board in writing of such appeal.

(f) If the administrative due process hearing is initiated by the local education agency, it shall simultaneously send the notice required by paragraph (a) of this section to the parent, the local school board and the Commissioner of Education.

(g) For purposes of this Part, the administrative due process hearing shall commence on the date the Commissioner of Education receives a notice of appeal in accordance with paragraph (c) or (d) of this section. Such notice shall comply with paragraph (d) above.

(h) Any party aggrieved by a final decision of the Department of Education hearing officer in a hearing held in accordance with rules adopted under RSA 186-C:16-b, IV may appeal that decision to a court of competent jurisdiction.

Ed 1128.04 LOCAL EDUCATION AGENCY ADMINISTRATIVE DUE PROCESS HEARING RESPONSIBILITIES. Each local education agency shall:

(a) Inform the parent that they have the right to request an administrative due process hearing to appeal the matters described in Ed 1128.03(a) above.

(b) Provide the parent with a full explanation of procedural safeguards available under 34 CFR 300.500, Subpart E - Procedural Safeguards, Due Process Procedures for Parents and Child.

(c) Inform the parent of any free or low-cost legal services and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the local education agency initiates a hearing under this section.

Ed 1128.05 DEPARTMENT OF EDUCATION ADMINISTRATIVE DUE PROCESS HEARING RESPONSIBILITIES. The Commissioner of Education shall conduct an administrative due process hearing as follows:

(a) Immediately upon receipt of the specific written notice requesting an administrative due process hearing required by Ed 1128.03, schedule a prehearing conference and an impartial due process hearing provided that such hearing shall be at a time and place reasonably convenient to the parent(s) and the child involved. In no case shall the hearing be scheduled to occur later than 45 days after receipt of the specific written notice by the local education agency.

(b) Notify the parties in writing of:

(1) The time and place of the hearing;

(2) Legal authority under which the hearing is to be held;

(3) The particular sections of the statutes and rules involved and provide a copy of Part Ed 1128; and

(4) The issues involved.

(c) Appoint a hearing officer, who shall be an attorney, to preside at each administrative due process hearing.

(d) Provide to the state advisory committee, established pursuant to the provisions of 20 USC 1413, a copy of each decision of the hearing officers, including findings of fact, after the deletion of personally identifiable information, as defined by Ed 1102.25.

(e) Make available to the general public, a copy of each decision of the hearing officers, including findings of fact, after the deletion of personally identifiable information, as defined by Ed 1102.25.

Ed 1128.06 ELEMENTS OF AN IMPARTIAL DUE PROCESS HEARING. An impartial due process hearing shall include the following elements:

(a) A prehearing conference, governed by Ed 1128.07;

(b) A hearing, governed by Ed 1128.09; and

(c) A decision, governed by Ed 1128.10.

Ed 1128.07 PREHEARING PROCEDURES. The prehearing conference required by Ed 1128.05(a) shall be conducted by a hearing officer and shall be governed by the following:

(a) Parties shall be prepared to discuss the following:

(1) Offers of settlement;

(2) Simplification and clarification of the issues;

(3) Limitations on the number of witnesses;

(4) Changes to standard procedures, by consent of the parties; and

(5) Consolidation of examination of witnesses by the parties.

(b) Parties shall exchange, and provide to the hearing officer, witness lists including a brief description of each witness's testimony, and documentary evidence at least 5 days before the hearing begins, excluding such first day of hearing. Documentary evidence exchanged shall be legibly labeled in the upper right-hand corner with consecutive arabic numerals as either "School District Exhibit (number)" or "Parent Exhibit (number)", as appropriate. An index, by title, of all exhibits submitted shall also be exchanged.

(c) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, the parties shall arrive at an agreed statement of facts. The parties shall submit a written stipulation containing an agreed upon statement of facts to the hearing officer at the commencement of the hearing.

(d) The following procedure shall be adhered to by the parties in arriving at this agreed statement of facts:

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(1) The party initiating the appeal shall draft a proposed statement of facts and submit it to the opposing party not later then 12 days before the first day scheduled for the hearing;

(2) The opposing party shall indicate on the proposed statement:

a. Which items they agree to;

b. Which they do not agree to; and

c. Any additional facts for inclusion.

(3) The opposing party shall then return the marked up proposed statement to the party initiating the appeal not later than 5 days before the first day scheduled for the hearing;

(4) The party initiating the appeal shall prepare and submit to the hearing officer a final stipulation containing an agreed upon statement of facts;

(5) The final stipulation shall include all original proposed facts submitted to which the opposing party agrees, plus any additional statement of fact proposed by the opposing party to which the party initiating the appeal agrees;

(6) The hearing officer shall waive the requirement in (1) - (5) above if a parent is not represented by counsel and the parent asserts that he or she is unable to fulfill such requirements; and

(7) In such case the hearing shall proceed to (e) below at which time the hearing officer shall assist the parties in preparing such statement.

(e) In order to minimize the confusion inherent in shuffling back and forth between identical school district and parent exhibits the first 2 hours of the first day scheduled for a hearing shall be reserved for the purpose of enabling the parties and the hearing officer to identify a single set of exhibits to be referenced throughout the hearing. A single list of exhibits, by number, shall be drawn up for the use of the parties and the hearing officer. When both parties have submitted identical exhibits, it shall be agreed that the list identifying a single set of exhibits shall be used by both parties, so that they shall refer to either the school district or parent exhibit exclusively throughout the hearing.

Ed 1128.08 **NOTIFICATION CONCERNING AGREEMENT**. If the parent and the local education agency reach an agreement prior to the hearing, then the local school district superintendent or his/her designee shall notify the Commissioner of Education in writing and include a written statement signed by both parties requesting the cancellation of the hearing.

Ed 1128.09 HEARING PROCEDURES. The hearing shall be conducted by a hearing officer and shall be governed by the following:

(a) All hearings shall be electronically recorded by the hearing officer or his/her designee. The hearing officer recording shall be the official record of the hearing unless the party/parties requests and pays for stenographic recording of such hearing. If this is the case the stenographic record shall be under the control of the hearing officer and shall be the official record. A hearing officer shall permit simultaneous recording of such hearing.

(b) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel, who shall be an attorney, or by individuals with special knowledge or training with respect to the problems of students with educational disabilities, pursuant to 34 CFR 300.508;

(2) Present evidence and confront, cross examine, and compel the attendance of witnesses in accordance with RSA 516;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 calendar days before the first day of the scheduled hearing, excluding such first day of hearing;

(4) Obtain an electronic verbatim record of the hearing, at any point during the hearing or afterwards; and

(5) Obtain written findings of facts and decisions.

(c) A parent involved in an administrative due process hearing has the right to:

(1) Have their child who is the subject of the hearing present at the hearing; and

(2) Open the hearing to the public. However, if an administrative due process hearing is open to the public, the hearing officer shall seat them and position their equipment in such a way that they do not interfere with the proceedings.

Ed 1128.10 DECISION

(a) The Department of Education shall ensure that not later than 45 days after receipt of a request for an administrative due process hearing:

(1) A final decision is reached in the hearing consistent with RSA 541-A:20; and

(2) A copy of the decision is sent by certified mail to each of the parties.

(b) A hearing officer may grant specific extensions of time beyond the period set out in (a) above for specific periods of time at the request of either party, for good cause shown.

Ed 1128.11 **REQUESTS FOR CONTINUANCES**. A hearing officer shall, upon written motion by either party for good cause shown, grant one continuance of any hearing scheduled under the provisions of Part Ed 1128. No additional contested continuances shall be granted by the hearing officer in such cases except for good cause shown, including but not limited to illness, accident or death of a family member.

Ed 1128.12 **APPEAL OF DECISION**. If either party is aggrieved by the decision of a hearing officer, either party may appeal this decision to the appropriate court of jurisdiction. In such cases the parties shall have the right to obtain an electronic verbatim record of the hearing from the Department of Education. The local education agency shall notify the Commissioner of Education when either party seeks judicial review of a decision.

Ed 1128.13 **POSTHEARING MATTERS.**

(a) The decision of a hearing officer shall be implemented immediately unless a delay is agreed to in writing by both parties, or one party files a timely appeal. Unless an appeal to court is filed by either party, or a delay is agreed to, the hearing officer's decision shall be fully implemented within 30 days, unless the hearing officer grants a request for extension of this time limit for just cause shown, including but not limited to illness, accident or death of a family member.

(b) If the parent, legal guardian, surrogate parent or adult student, or local school district does not appeal the decision of the hearing officer to court, then the local education agency shall, within 90 days, provide to the Commissioner of Education, and the hearing officer, a written report describing the implementation of the hearing officer's decision and provide a copy of this report to the parent, legal guardian, surrogate parent or adult student. If the parent, legal guardian, surrogate parent or adult student does not concur with the local education agency's report, he or she shall submit his or her own report to the Commissioner of Education.

(c) Hearing officers shall retain jurisdiction until a decision is fully implemented or a timely appeal seeking judicial review is filed.

Ed 1128.14 **PLACEMENT PENDING APPEALS**

(a) During the pendency of any administrative or judicial proceeding, unless the local education agency and the parent agree otherwise, the child involved shall remain in his or her current educational placement.

(b) If the matter involves an application for initial admission to public school, the child, with the consent of the parent, shall be placed in the public school program until the completion of all the proceedings.

Ed 1128.15 HEARING OFFICERS

(a) The Commissioner of Education pursuant to 34 CFR 300.507, shall keep a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each of those persons.

(b) Hearing officers shall be attorneys who have been admitted to the practice of law in at least one jurisdiction and shall be subject to the Code of Judicial Conduct.

(c) The Commissioner of Education shall enter into contracts with attorneys to serve as impartial due process hearing officers at administrative due process hearings. Such hearings shall not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child;

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the impartial due process hearing; or

(3) By any elected member of a local school board.

(d) An attorney under contract to serve as a hearing officer pursuant to 34 CFR 300.507 for purposes of this rule shall not be considered to come under (c)(1) above.

(e) Hearing officers shall attend training sessions concerning current special education practices and law. The frequency and content of such sessions shall be determined by the Commissioner of Education or his/her designee.

(f) If a person shall serve as a hearing officer he/she shall have no clients in a special education matter in New Hampshire or in any other state.

(g) No person shall serve as a hearing officer who has served as a state or local school board official or a school administrator, including a special education administrator, or as an advocate for students with educational disabilities or their parents, in New Hampshire or in any other state within the immediately preceding 12-month period.

(h) No attorney shall preside as a hearing officer in any hearing in which there is a party:

(1) Whom the attorney has represented in any matter within the immediately preceding 12-month period; and

(2) By whom the hearing officer has been employed during the immediately preceding 3-year period.

CHAPTER Ed 1129

STATE DEPARTMENT OF EDUCATION MONITORING OF EDUCATIONAL SERVICES AND PROGRAMS FOR STUDENTS WITH EDUCATIONAL DISABILITIES

Ed 1129.01 LOCAL EDUCATION AGENCY APPLICATION

(a) Each local education agency shall file a written application with the Department of Education in order to receive payments under Part B of the IDEA. Local education agencies shall review their application annually and make revisions as necessary. The local education agency's application and any revisions shall be submitted to the New Hampshire Department of Education for approval. Applications that are in compliance with the requirements and criteria established in 34 CFR 300.220 through 34 CFR 300.240 and Ed 1129.01 shall be approved. Local education agencies not having an approved application in effect shall not be eligible to receive state or federal special education funds.

(b) The local education agency application shall fully and accurately describe the district's policies and procedures regarding the provision of a free appropriate public education to all students with educational disabilities. The local education agency application shall include:

(1) A child find component that shall describe the local education agency's written child find plan, which shall ensure that all persons from birth through 21 years of age residing within the district who have disabilities, are identified, located, and evaluated and that those requiring special education or special education and educationally related services from 3 to 21 years of age shall be determined;

(2) A confidentiality component that shall describe the local education agency's policies and procedures to ensure confidentiality of student records;

(3) A section on facilities, personnel, and services that shall provide a detailed description of all facilities, personnel, and services the local education agency shall provide for all identified students with educational disabilities including:

a. The full range of opportunities the local education agency shall make available in public schools, including class size, staff, educationally related services, extent of participation in regular programming, number of spaces available, types of disabilities served, and ages of students served;

b. Regional programs the local education agency shall make available to students with educational disabilities;

c. Non-public schools within the district serving students with educational disabilities;

d. Non-public schools the local education agency shall use for out-of-district placements for students with educational disabilities; and

e. Vocational programs the local education agency shall provide for students with educational disabilities;

(4) A personnel development component that shall describe the local education agency's policies and procedures to ensure that special education staff development opportunities shall be available to teachers, staff and administrators, including a description of current in-service activities and those for the next school year;

(5) A parent involvement component that shall describe the local education agency's policies and procedures which shall specify the participation of parents in the process of identifying, evaluating, developing individualized education programs, and determining placement of students with educational disabilities;

(6) A public participation component that shall describe the local education agency's policies and procedures to ensure the local education agency application is available for review by parents, other agencies, and the general public;

(7) A procedural safeguards component that shall describe the local education agency's policies and procedures which shall ensure that due process, confidentially, and other required procedural safeguards are available in written form to students with educational disabilities and their parents;

(8) A pupil evaluation to placement section that shall describe the local education agency's policies and procedures for referral, evaluation, development of individualized education programs, and placement for students with educational disabilities which shall describe, in chronological order, all participants in the decision making and implementation;

(9) A program evaluation component that shall describe the local education agency's policies and procedures for determining:

a. The degree to which the special education or special education and educationally related services being provided for students with educational disabilities are effectively meeting the identified student needs;

b. The methods the local education agency shall use for determining program deficiencies and future needs;

c. Strategies designed to eliminate identified gaps and program needs; and

d. A plan aimed at complying with findings of the report issued by the Commissioner of Education following an on-site compliance monitoring review of the district's special education programs and its implementation of the IDEA by the (New Hampshire Department of Education) Special Education Team pursuant to its duties as assigned by RSA 186-C:5.

(10) A component concerning other agencies that shall describe the local education agency's policies and procedures to ensure coordination with other local and state agencies in meeting the needs of students with educational disabilities; and

(11) A component that shall describe the local education agency's policies and procedures to ensure that students with educational disabilities enrolled in private schools by parents who reside in the jurisdiction of the local education agency have the opportunity for equitable participation in special education programs in accordance with Ed 1117.

Ed 1129.02 CRITERIA FOR APPROVAL OF PUBLIC AND NON-PUBLIC PROGRAMS

(a) The State Board of Education, pursuant to its rulemaking authority described in RSA 186-C:16, has adopted Chapter Ed 1100, also commonly known as the *New Hampshire Standards for the Education of Students with Disabilities*, as the basis for approval of programs of education that are maintained by school districts, private organizations, state institutions, and other non-district organizations for the benefit of students with educational disabilities, including home-based programs. The Department of Education shall use the requirements in these rules as the basis for determining program approval.

(b) The New Hampshire Department of Education shall approve public and non-public programs for students with educational disabilities through a monitoring process, including but not limited to on-site visit(s) and examination of written documentation which shall review the following program components:

(1) Administrative staff, including certification and staff development;

(2) Instructional staff, including certification and staff development;

(3) Student diagnostic procedures, including procedures for handling confidential information, due process guarantees, least restrictive environment processes, child find activities, non-discriminatory testing practices, and individualized education programs;

(4) School program operation;

(5) School program information;

(6) Supporting services/educationally related services;

(7) Fiscal aspects of the school, class, or program;

(8) Physical plant;

(9) Monitoring of IDEA and Chapter I;

(10) Compliance with state statutes and State Board of Education rules;

(11) Compliance with federal statutes;

(12) For local education agencies, a review of the local education agency application;

(13) Review of complaint procedures;

(14) For local education agencies, a review of placement practices;

(15) Review of data systems;

(16) Examination of least restrictive environment practices; and

(17) Any other component mentioned elsewhere in Ed 1100.

(c) All programs operated by school districts, private organizations, state institutions, and other non-district organizations shall be reviewed, utilizing the New Hampshire special education program approval process, at least once every 5 years. A written draft report of findings shall be issued indicating compliance or non-compliance with statutes and rules relative to all programmatic components and issues monitored by the reviewing team. The final report, issued by the Commissioner of Education, shall include corrective actions to be taken and the specific time frames within which each of these corrective actions shall be taken for all matters which are in non-compliance.

Ed 1129.03 OUT-OF-STATE PLACEMENTS

(a) The New Hampshire State Department of Education shall not approve out-of-state special education schools, classes, or programs. However, since RSA 198:20-a requires that no monies shall be paid or granted to non-approved special education schools, classes, or programs, the State Board of Education has developed a system to approve the individual placements of students with educational disabilities in out-of-state facilities.

(b) No individual placements of students with educational disabilities shall be approved in out-of-state facilities until the ensuing procedures have been completed.

(c) The procedures for approval of individual out-of-state placements shall be as follows:

(1) The local education agency shall contact the (New Hampshire Department of Education) Special Education Team to verify that the out-of-state facility being considered is approved as a special education program by the host state's department of education. Only under extraordinary circumstances, such as the proposed placement is the only facility where the student's individualized education program can be implemented, shall the (New Hampshire Department of Education) Special Education Team consider approval of the placement of a student with educational disabilities at an out-of-state facility which is not approved for special education purposes by the host state's department of education;

(2) The out-of-state facility shall meet the host state's health and fire regulations;

(3) The local education agency shall conduct a search and indicate that there are no appropriate and approved in-state special education programs available to meet the individual needs of that student with educational disabilities; and

(4) The local education agency shall develop the individualized education program, complete placement recommendations, and submit both to the Department of Education.

(d) Requests to approve placements of individual students shall be approved when:

(1) The requirements of Ed 1129. 03(c)(1) and Ed 1129.03(c)(2) have been met; and

(2) The documentation submitted by the local education agency gives evidence that:

a. There are no facilities within New Hampshire that can implement the student's individualized education program; and

b. The proposed out-of-state special education program can implement all components of the student's individualized education program.

Ed 1129.04 IN-STATE NON-APPROVED SPECIAL EDUCATION FACILITY PLACEMENTS

(a) No placement of a student with disabilities in an in-state non-approved facility shall be approved until the ensuing procedures have been completed:

(1) The local education agency shall review inspection reports and certificates to determine that the in-state facility meets New Hampshire health and fire rules for non-public schools as established by Public Health Statute RSA 200:11 and the State Fire Code National Fire Prevention Association Pamphlet #101, "Life Safety Code;"

(2) A representative of the local education agency shall have visited the facility, reviewed the staff competencies, instructional materials and setting, and discussed the student's needs with appropriate staff;

(3) Subsequent to the visitation required in (2) above, the local education agency's special education placement team shall determine that the facility is capable of implementing the student's individualized education program;

(4) The local education agency shall have conducted a search and determined that there are no approved in-state special education programs available to meet the individual student's need for special education and educationally related services;

(5) The local education agency shall submit the following to the (New Hampshire Department of Education) Special Education Team:

a. A statement that the facility meets New Hampshire fire and health regulations for schools as referenced in (1) above;

b. The date the facility was visited by a representative of the local education agency and the date the special education placement team determined the placement was the least restrictive program capable of implementing all components of the student's individualized education program;

c. A description of the specific needs of the student;

d. The student's individualized education program and annual statement of program; and

e. Any additional material, such as descriptive material about the proposed placement, which may be requested by the (New Hampshire Department of Education) Special Education Team as evidence to support the request.

(b) The (New Hampshire Department of Education) Special Education Team shall review all documentation submitted by the local education agency and shall approve requests for individual placement of students with disabilities at non-approved in-state facilities when the documentation demonstrates that the student will receive a free appropriate public education in the least restrictive environment.

(c) The maximum number of individual student placements the (New Hampshire Department of Education) Special Education Team shall approve at any one non-approved facility shall be 5.

(d) Non-approved facilities wishing to serve more than 5 students with educational disabilities shall apply for special education program approval.

(e) Rates for non-approved in-state facilities shall be established in accordance with procedures established in Ed 1134.

Ed 1129.05 SPECIAL EDUCATION INFORMATION SYSTEM (SPEDIS) FORMS AND DATA

(a) The provisions of Ed 1125.04(a)(3) and (4) require school districts to secure parental consent for the initial and annual renewal of a placement before any student with educational disabilities shall be placed in a special education program. The Annual Statement of Program (ASP) form to be used for this purpose shall include the following:

(1) Information describing the student including:

a. The student's name;

b. The student's town of residence;

c. The student's local education agency;

d. The student's date of birth; and

e. The student's SPEDIS number;

(2) Identification of the formal and informal evaluations conducted to determine that the student has an educational disability, the categories of qualified examiners administering the evaluations, and the dates administered;

(3) Identification of the student's educational disability;

(4) Identification of the specific special education program and educationally related services if necessary to be provided to the student, the extent to which the student will participate in regular educational programs, and the projected date for initiation and anticipated duration of the special education or special education and educationally related services;

(5) A statement which requires the parent to sign indicating either agreement or disagreement with the proposed program;

(6) The dates that:

a. The special education evaluation team determined the student to have an educational disability;

b. The parent approved the individualized education program; and

c. The special education placement team selected the student's education placement;

(7) Discharge information for transition planning; and

(8) The signature of the individual representing the local education agency.

(b) The date of discharge and reason the student is being discharged shall replace the information in Ed 1129.05(a)(4) above when the form is being submitted to indicate that the student is no longer receiving special education.

(c) A copy of the ASP shall be forwarded by mail or electronically at least annually to the Department of Education for monitoring purposes. ASP forms shall be filed within 20 calendar days after they are signed by the parent.

(d) The local education agency shall not be required to file a paper copy of the ASP with the Department of Education when the local education agency elects to enter their own data into SPEDIS.

(e) A copy of the signed ASP form shall be provided to the parent and a copy placed in the student's educational records.

CHAPTER Ed 1130

EDUCATION OF CHILDREN PLACED IN HOMES FOR CHILDREN, HEALTH CARE FACILITIES, OR STATE INSTITUTIONS

Ed 1130.01 PURPOSE

It is the intent of this part to assure the provision of a free appropriate public education as defined in Ed 1102.13 to students with or who might have educational disabilities who are in residential placement or placements awaiting disposition of the courts and committed juvenile students with or who might have educational disabilities to the extent that such students are not covered under Ed 1136. Further, in compliance with the consent decree, James O., Kelly E. and William B. et al. v. Charles H. Marston, et al, the New Hampshire State Board of Education adopts these rules including specific provisions regarding placement of children by the court pursuant to RSA 169-B, 169-C or 169-D. Such provisions shall apply to the initial placement of children and all successive placements by a state court acting pursuant to RSA 169-B, 169-C or 169-D. It is the intent of the New Hampshire State Board of Education that these rules provide a framework for the Department of Education to work cooperatively with DCYF and DYDS in mutually fulfilling the terms of the consent decree.

Ed 1130.02 DEFINITIONS

(a) Definitions provided in Ed 1102 shall apply, except that the following definitions shall apply for the purpose of Ed 1130 only.

(1) "Child" means "student", or "youth", 3 years of age but less than 21;

(2) "Classmember" means a child 3 years of age, but less than 18, unless DCYF jurisdiction has been extended beyond the age of 18, in which case it means a student up to the age of 21 who has not yet received a high school diploma;

(3) "Days" means calendar days except that when the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded;

(4) "DCYF" means the Division for Children, Youth and Families;

(5) "DYDS" means the Department of Youth Development Services;

(6) "Educational records" means any document in the possession of DCYF, the Department of Education, or any school district which is relevant to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, but does not include:

a. Records of instructional, supervisory, and administrative personnel and ancillary educational personnel that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

b. Records of a law enforcement unit of an educational agency or institution, but only if educational records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are:

1. Maintained separately from education records;

2. Maintained solely for law enforcement purposes; and

3. Disclosed only to law enforcement officials of the same jurisdiction.

c. Records relating to an individual employed by an educational agency or institution, unless that employment results from status as a student. Otherwise, employment records include those records that:

1. Are made and maintained in the normal course of business;

2. Relate exclusively to the individual in that individual's capacity as an employee; and

3. Are not available for use for any other purpose.

d. Records relating to a student who is 18 years of age or older, or is attending an institution of post-secondary education, that:

1. Are made or maintained by a physician, psychiatrist, psychologist, or related paraprofessional acting in his/her professional capacity;

2. Are made, maintained, or used only in connection with treatment of the student which does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

3. Are disclosed only to individuals providing the treatment.

e. Records that only contain information about an individual concerning acts or occurrences which happen after he/she is no longer a student at that agency or institution;

(7) "Emergency" means an event, crisis, or set of circumstances necessitating immediate action without the opportunity to follow the procedures set forth in Ed 1130 including but not limited to changes in a child's placement necessitated by a life or safety emergency, or the unavailability of a placement;

(8) "Facility" means the Tobey School, Philbrook Center, the Detention Unit of the Youth Services Center, and the Youth Development Center;

(9) "Liable school district" means the school district responsible for overseeing a student's educational program including a student's special education program;

(10) "Parent" means any person, including a surrogate parent, designated by 34 CFR 300.10 and Ed 1102.23, to make decisions regarding the provision of a free appropriate public education to a child;

(11) "Placement" or "Place" means the act of enrolling a student in, or committing or moving a student to, an educational program or residential program or facility, or the act of transferring a student from one educational program or residential program or facility to another; "placement" or "place" also means the site in which a student has been or will be placed;

(12) "Program or services" means a service or collection of services provided to a child in connection either with an adjudication by the state district or superior courts pursuant to RSA 169-B, RSA 169-C, or RSA 169-D, or with identification as a student with educational disabilities pursuant to the IDEA and RSA 186-C;

(13) "Receiving district" means the school district in which a home for children or a health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district in accordance with RSA 193:27, RSA 193:28 and RSA 193:29;

(14) "Residence" means the physical location of the home, program, or facility in which the student is housed;

(15) "Sending district" means the school district, as defined in RSA 193:27, in which a child most recently resided other than in a home for children, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides;

(16) "Student" means the same as "child" defined at Ed 1130.02(a)(1); and

(17) "Written prior notice" means a letter provided to a parent which describes the action the school district proposes to take, or action it refuses to take, with respect to the identification, evaluation or the educational program, placement or services of a child with an educational disability. The school district shall provide such notice to a parent in accordance with Ed 1125.03 and 34 CFR 300.504 and 34 CFR 300.505.

Ed 1130.03 PREPLACEMENT AND PLACEMENT REVIEW PROCEDURES FOR CHILDREN PREVIOUSLY DETERMINED TO HAVE EDUCATIONAL DISABILITIES

(a) The liable school district, shall ensure that when a child is placed by the court or when the court changes a child's existing placement pursuant to RSA 169-B, RSA 169-C or RSA 169-D, the child shall, to the extent possible and appropriate according to Ed 1101 and Ed 1130.01, continue his/her current individualized education program as defined in Ed 1109.01.

(b) To this end, placements shall allow for the student's attendance at:

(1) The same educational program to which the child has already been assigned; or

(2) If continuation of the same educational program is not possible, then the child shall be assigned to the least restrictive, appropriate educational program which provides similar services as the child was receiving in his or her last educational program.

(c) Once joined by the court, the school district identified as the liable school district shall be responsible, during the pendency of any proceedings under RSA 169-B, 169-C, or 169-D, for evaluating the student, and reviewing, revising, developing or implementing the IEP and educational placement and in all other respects providing the educationally disabled student with a free appropriate public education unless and until another school district is substituted as a party by order of the state court. If the student has already been identified as having educational disabilities, the liable school district shall convene a special education placement team meeting pursuant to Ed 1115.01 prior to the change in placement.

(d) This special education placement team meeting shall comply with the requirements of Ed 1115.01, at which meeting the team shall consider:

(1) The impact of the proposed change in placement on the child's current individualized education program;

(2) Whether the proposed change in placement or a change in placement as a result of a proposed placement change, is appropriate and in the least restrictive environment;

(3) Whether the child's individualized education program may be implemented in the proposed placement;

(4) What changes shall be made to accommodate the student's individualized education program in the proposed placement; and

(5) Any other matters relating to the placement of a student made in accordance with Ed 1101 and Ed 1130, including:

a. Evaluation;

b. Identification;

c. Effectiveness of previous placements; or

d. Other factors contributing to the need for a change in educational assignment.

(e) The liable school district shall request that a representative of DCYF involved with the student for whom placement is being considered, receive notice of and be invited to attend any meetings convened pursuant to this part. The liable school district shall provide such notice to DCYF representatives and permit DCYF participation as follows:

(1) If the representative of DCYF elects to attend the meeting, that person shall be a member of the special education placement team convened pursuant to Ed 1130.03(d);

(2) If a representative of DCYF does not elect to attend the meeting, the liable school district shall, after notifying parent(s), promptly provide DCYF with a copy of any educational records developed during or as a result of each such meeting; and

(3) This section shall apply to all special education placement teams convened pursuant to Ed 1130.01(a).

(f) An educational assignment shall be recommended by the special education placement team only if it finds that the educational assignment is one in which the student can receive a free appropriate public education in the least restrictive environment in accordance with Ed 1101, and that the individualized education program shall be promptly implemented after assignment of the student.

(g) Once the special education placement team reaches the determination required by this section, the liable school district shall:

(1) Provide the parent or surrogate parent with notice, meeting the requirements of Ed 1125.03, of the special education placement team's:

a. Proposed educational assignment; and

b. Findings relative to:

1. The appropriateness and restrictiveness of the proposed educational assignment; and

2. The extent to which the individualized education program can be implemented in the placement proposed by DCYF.

(2) At least 5 days prior to the court hearing on DCYF placement, file with the state district court having jurisdiction over the student a report of the school district's written recommendations and copy of the written prior notice pursuant to Ed 1125.03. The team's report to the state court shall also include a statement as to whether any of the other placements being considered, including any separate recommendations submitted to a state district court, is appropriate, in the least restrictive environment and capable of implementing the student's IEP.

(3) At any time prior to a district court hearing regarding placement, any member of the team, including the DCYF representative, may submit to the state court having jurisdiction over the student under RSA 169-B, 169-C or 169-D, recommendations which differ from those of the special education placement team's decision, in this event, that interested party, if other than a parent, shall provide the parent with:

a. Written copy of such differing recommendations;

b. Notice of these dissenting recommendations shall be provided to the parent, school district, DCYF and the district court at least 5 days prior to the hearing on placement; and

c. Notice of these dissenting recommendations shall contain all information as required by Ed 1125.03, written prior notice, as well as an explanation as to how alternate recommendations on educational assignment are more appropriate than those of the special education placement team's group recommendation.

(4) The parents shall have a right to be heard on the issue of placement pursuant to RSA 169-B, RSA 169-C or RSA 169-D, in any court having jurisdiction over the placement or in any appropriate administrative proceeding including the impartial due process hearings pursuant to Ed 1128.

(5) However, if the dissenting interested party has reason to believe that the provision of such dissenting recommendations could result in the student being threatened by physical harm or severe and irreparable psychological harm, they shall:

a. Apply to the liable school district and petition the district court simultaneously to:

1. Declare the parent unavailable as defined in Ed 1121.04(d);

2. Request the court to order the Commissioner of Education to appoint a surrogate parent pursuant to Ed 1121.05;

3. Delay implementation of notice of the dissenting recommendations pursuant to (3) above, until such time as a surrogate is appointed, unless ordered by the court to provide notice of the dissenting recommendations; and

4. Provide such notice of dissenting recommendations only to the surrogate parent.

(6) In any instance where a state district court issues an order authorizing or making a placement, program or service which differs from or conflicts with the placement, program or services recommended by the team, special education and special education and educationally related services are provided in a manner consistent with the placement decision made by the state court in conformity with an IEP developed by the team for use during such placement.

Ed 1130.04 EMERGENCY PLACEMENT REVIEW PROCEDURES FOR CHILDREN PREVIOUSLY DETERMINED TO HAVE EDUCATIONAL DISABILITIES

(a) In an emergency as defined by Ed 1130.02(a)(7), whenever the liable school district receives notice from DCYF that a student's placement has been changed, the school district shall:

(1) Upon notice from DCYF, immediately notify parents of the district's intent to convene a special education team meeting.

(2) Convene a special education team meeting in accordance with the requirements of paragraphs Ed 1130.03(d) 10 days after notice to parents for the purpose of:

a. Reviewing the nature of the emergency and its relation to the student's educational disability;

b. Reviewing the individualized education program in light of the emergency presented;

c. Considering the appropriateness of the education assignment; and

d. Revising of the student's individualized education program if necessary.

Ed 1130.05 PREPLACEMENT AND PLACEMENT REVIEW PROCEDURES FOR STUDENTS NOT PREVIOUSLY DETERMINED TO HAVE EDUCATIONAL DISABILITIES

(a) Upon receipt of notice according to Ed 1107.02 by DCYF or upon order of the state court having jurisdiction, when DCYF plans to change the placement of a student for whom there is reason to believe an educational disability might exist, the liable school district shall:

(1) Initiate full evaluation procedures pursuant to and meeting the requirements of Ed 1107 which shall be completed within 45 days of school district receipt of parental consent. To the extent that the liable school district is not able to secure parental consent, the district may:

a. Seek appointment of a surrogate parent; or

b. Seek a court order for an evaluation; or

c. Waive the 45-day requirement to the extent of a parent's delay in providing the district with consent.

(2) Once the evaluation is complete, a special education evaluation team meeting shall be convened by the liable school district pursuant to Ed 1107 to determine the existence and/or nature of any educational disability the student might have.

(3) The liable school district shall provide DCYF with notice of and invitation to attend the evaluation team meeting; and

(4) If the student is determined by the special education evaluation team to have educational disabilities, the school district shall initiate and comply with procedures set forth in Ed 1109, Ed 1115, and Ed 1130.03.

Ed 1130.06 PLACEMENT REVIEW PROCEDURES FOR EMERGENCY DCYF PLACEMENTS OF CHILDREN NOT PREVIOUSLY DETERMINED TO HAVE EDUCATIONAL DISABILITIES

In an emergency as defined by Ed 1130.02(a)(7), whenever the liable school district receives notice from DCYF of a student's change in placement pursuant to RSA 169-B, RSA 169-C or RSA 169-D, and referral by DCYF in accordance with Ed 1107.02, the provisions of Ed 1130.05 shall apply.

Ed 1130.07 DETERMINATION OF LIABLE SCHOOL DISTRICT

(a) School districts shall use the following procedure for requesting a ruling by the Department of Education:

(1) If a school district disputes another district's assessment that it is a sending district, it shall request that the New Hampshire Department of Education resolve the dispute;

(2) Any school district that has been joined to a proceeding in a district court of New Hampshire for the purpose of determining school district liability pursuant to RSA 169-B, RSA 169-C or RSA 169-D, shall request that the Department of Education determine financial liability; and

(3) Requests for determination of financial liability for the provision of special education and educationally related services shall be made in writing to the Commissioner of Education. Such requests shall contain as much of the following information as is available to the requesting school district:

a. Student's name and date of birth;

b. Parent's name and address, if available;

c. Name, agency name, mailing address, and telephone number of person requesting that determination of liability be made;

d. A list of the dates of placement, stating start date and end date, for all of the child's placements, starting with:

1. The child's current placement, back to his/her most recent placement not made pursuant to RSA 186-C, RSA 193, RSA 169 or RSA 170-E to the present, accompanied by the following information for each of those placements:

(i) Name of each placing agency such as parent, DCYF, school district, court;

(ii) Physical address of each placement, including name of placement if a facility is the same as location of child;

(iii) Custody status of child at the time of each placement: parent custody such as joint custody, mother alone, father alone, legal supervision by DCYF, legal guardianship by DCYF or other person/party, relinquishment or termination of parental rights;

(iv) Addresses of both parents at time of placement;

e. If any of the above information is not available the school district shall state that the information is not available and the reasons therefore; and

f. A school district may submit any other information relevant to the determination of financial liability.

(b) Investigation by Department of Education shall proceed as follows:

(1) Upon receipt of a request for determination of financial liability, the Commissioner of Education or his/her designee shall conduct a prompt and thorough investigation of the facts and circumstances necessary for such a determination. When a determination of liability is requested:

a. The investigator shall inquire of all state and local agencies and municipal corporations which might have information relevant to the dispute;

b. The investigator shall inquire of any relatives of the student or other individuals who might have information relevant to the dispute; and

c. The investigator shall notify all persons contacted for information, of the confidentiality requirements.

(2) Upon receipt of information that a school district other than the school district or school districts requesting determination may be financially responsible, the Commissioner of Education or his/her designee shall notify that newly identified school district promptly. Such notice shall inform the school district that it may provide any relevant information to the Commissioner of Education or his/her designee until 30 days after the date the notice was issued. In no dispute shall the Commissioner of Education or his/her designee determine that a school district is financially responsible sooner than 35 days after the school district has been issued such notice.

(3) The Commissioner of Education or his/her designee shall maintain all information provided for the investigation in a confidential manner. Only school districts that are parties to a particular dispute and their attorneys and those authorized by their attorney or by the school district may review a file maintained with respect to that dispute; and

(4) After completion of the investigation the Department of Education shall issue a written determination of financial liability. This written determination shall set forth the facts and circumstances supporting the decision and the provisions of law directing determination.

(c) Appeal of the Department's determination of liable school district may be made in accordance with Ed 1127.04.

Ed 1130.08 DISPUTE RESOLUTION PROCEDURES

(a) If a liable school district has not been identified or has refused to assume responsibility for carrying out provisions set forth herein in Ed 1130, unless such placement is in a health care facility, residential school or state institution as defined in RSA 193:27, the school district in which the child has been placed outside the home by DCYF shall identify, evaluate or otherwise provide a free, appropriate public education to the student with educational disabilities pursuant to Ed 1101.

(b) In cases where the liable school district has not assumed responsibility for a child, the Department of Education shall fulfill the role of a liable school district for purposes of evaluating the student pursuant to Ed 1107 and reviewing, revising, developing and implementing the individualized education program in accordance with Ed 1109 until a liable school district assumes these responsibilities on its own or by virtue of a determination of liability by the Department of Education. In addition to any other actions taken by the Department of Education, provisions of Ed 1131, Enforcement Regulations, shall apply.

(c) Any actions taken by a school district joined as a party in proceedings under RSA 169-B, RSA 169-C or RSA 169-D, regarding the provision of a free appropriate public education to a student with educational disabilities, shall be without prejudice to a school district's right under RSA 193:29 to recover monies expended for the provision of such education from a sending district or from any public agency as defined by 34 CFR 300.11.

(d) The school district shall not be responsible for the funding of programs or services necessary for the purposes of implementing an existing or amended program of special education or special education and educationally related services during the pendency of a dispute concerning school district joinder and liability.

(e) A dispute as to the appropriateness of an evaluation, determination of educational disability, individualized education program or educational assignment, as reflected in a local school district decision may be appealed and shall be handled as provided in Ed 1128. The decision of the hearing officer shall be implemented and the procedures for reporting to the court set forth in Ed 1130.03 shall be followed.

(f) Matters relating to compliance under Ed 1127.01 shall be submitted to the Department of Education for investigation by a complaint officer.

(g) In all cases where there is a dispute, the provisions of Ed 1128.14 shall apply unless the placement, program or services for any student are changed or modified by a court of competent jurisdiction or a district court acting pursuant to RSA 169-B, RSA 169-C and RSA 169-D. In an emergency:

(1) The issues in dispute shall be submitted to the state district court having jurisdiction pursuant to RSA 169-B, RSA 169-C and RSA 169-D; and

(2) In any instance where a district court issues an order authorizing the provision of a special education assignment, program, or service which differs from or conflicts with the educational assignment, program or service recommended by the special education team, special education and educationally related services shall be provided at no charge to the parents and in conformity with an individualized education program developed by the special education team for use during such placement.

Ed 1130.09 STUDENT FILES MAINTAINED

(a) Whenever a student is placed in a residential program or facility other than a home for children as defined in RSA 170-E, the liable school district shall ensure that:

(1) The special education placement team develops a written document which shall be included in the student file maintained by the liable school district. Such document shall indicate:

a. The date of initial placement in the residential program or facility;

b. The placing agency;

c. The reason for the placement;

d. The specific steps to be taken to obtain a less restrictive program for the student, including but not limited to, cooperative planning with the student's parent, legal guardian and other interested parties; and

e. The projected date for change of this placement to a less restrictive environment.

(2) A copy of all necessary educational records of the student including, but not limited to, the student's current individualized education program and evaluations is provided to the student's new educational program so the individualized education program then in effect can be implemented immediately.

CHAPTER Ed 1131
STATE DEPARTMENT OF EDUCATION ENFORCEMENT

Ed 1131.01 STATE DEPARTMENT OF EDUCATION ENFORCEMENT OF THESE REGULATIONS

(a) The application of these enforcement procedures shall occur subsequent to the issuance of orders resulting from a complaint investigated in accordance with Ed 1127, a due process hearing conducted in accordance with Ed 1128, or a monitoring activity conducted in accordance with Ed 1129.

(b) In the event a local school district, other public agency, private facility or other non-district organization fails or refuses to comply with the regulations specified in Chapter Ed 1100, the Department of Education shall invoke, as needed, the enforcement procedures described in Ed 1131.02 below.

Ed 1131.02 ENFORCEMENT PROCEDURES

(a) The Commissioner of Education or his/her designee shall appoint personnel from the special education team to monitor the execution of the orders of compliance issued to a local school district, other public agency, or private facility as a result of a complaint investigated in accordance with Ed 1127, a due process hearing conducted in accordance with Ed 1128, or a monitoring activity conducted in accordance with Ed 1129.

(b) At the conclusion of the time limit specified for the agency to have taken corrective action specified in the orders of compliance, the director of special education shall forward to the Commissioner of Education a written report indicating the extent to which the agency had taken corrective action to achieve compliance with the IDEA and Chapter Ed 1100.

(c) In the event the written report shows that the local school district. other public agency, private facility, or other non-district organization has not complied with orders issued by the Department of Education, the Commissioner of Education shall give the written notice of the enforcement action to be taken.

(d) Sanctions the Commissioner may implement to enforce orders of compliance shall include:

(1) Making no further payments of state or federal funds to the local education agency or public agency until the Department of Education has evidence that there is no longer any failure to comply with the orders; or

(2) Order, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied state and/or federal funds; or

(3) In the case of a local school district or other public agency, refer the matter to the Department of Justice for further action; or

(4) In the case of a private facility, order all school districts with students placed in the private facility to relocate the students for whom each district is responsible to other programs or facilities that are in compliance with the IDEA and Chapter Ed 1100.

Ed 1131.03 OPPORTUNITY FOR A HEARING

(a) The local school district, other public agency, private facility, or other non-district organization may request a hearing before the State Board of Education if it believes that the orders of compliance are inaccurate, invalid, and/or not based on fact.

(b) School districts, other public agencies, or other private facilities requesting hearings shall do so within 14 days after the date of the Commissioner of Education's written notification of the enforcement action that will be taken.

(c) In those instances where federal funds are withheld, the appellant may request a hearing before the United States Secretary of Education.

Ed 1131.04 FINANCIAL AUDITS

The Department of Education's Office of Business Management, within available resources, shall audit all state and federal special education monies allocated to any public or private agency by the Department of Education.

CHAPTER Ed 1133

STANDARDS FOR APPROVAL OF PRIVATE FACILITIES AND OTHER NON-DISTRICT PROGRAMS

Ed 1133.01 APPLICABILITY. These rules shall apply to private facilities and other non-district operated programs, including state-operated programs.

Ed 1133.02 DEFINITIONS. "Governing body" means the individual or group of individuals legally responsible for the policies, operations, and activities of a private facility or other non-district program.

Ed 1133.03 GOVERNANCE

(a) A private facility or other non-district program shall have a clearly identifiable governing body which shall be responsible for ensuring the program's compliance with the program charter, constitution, or other organization document or agreement and with the terms of all leases, contracts, or legal agreements to which the program is a party.

(b) The governing body shall ensure that the program is in compliance with all federal, state, and local laws concerning the education of students with educational disabilities including the IDEA and RSA 186-C.

(c) The governing body shall appoint a person with authority to manage the affairs of the program to act as chief administrator.

(d) The governing body shall ensure that there are sufficient funds to operate the program and that the school finances are handled according to standard accounting practices. The governing body shall review and approve the annual budget and budget audit of the program.

(e) A private facility or other non-district program shall keep on permanent file documents clearly identifying the program's ownership and the legal basis for the program's operation.

(f) A private facility or other non-district program shall keep on permanent file a current list of the names and addresses of all members of the program's board of directors. Such list shall identify the officers of the board, the terms of office of such officers, and the employers of all members of the board.

(g) A private facility or other non-district program shall have written minutes of all meetings of the governing body.

(h) A private facility or other non-district program shall file with the Department of Education documents which fully identify its ownership. A corporation, partnership, or association shall file its charter, partnership agreement, constitution, articles of association, and/or by-laws.

Ed 1133.04 ADMINISTRATION

(a) Each private facility or other non-district program shall demonstrate fiscal accountability through regular recording of its finances and an annual external audit. This audit shall be available to the Department of Education upon request.

(b) Each private facility or other non-district program shall have written policies which comply with the provisions of the IDEA and RSA 186-C.

(c) Each private facility or other non-district program shall have written policies and procedures for the protection of confidential information, in accordance with Ed 1123 including:

(1) The release of information to other persons and/or agencies; and

(2) Written procedures and schedules for destruction of outdated files and records.

(d) Each private facility or other non-district program shall have separate office space located on the program's campus with locked, fireproof file cabinets to ensure the security of confidential records.

(e) Each private facility or other non-district program shall have a written statement specifying its philosophy, purposes, and program orientation and describing both short and long-term aims. The statement shall identify the types of services provided and the characteristics of the students to be served by the program. The statement of purpose shall be available to the public on request.

(f) A private facility or other non-district program shall maintain on permanent file a written description of the admission process, including a description of all admissions criteria and identification of the educational disabilities of the students served by the program.

(g) A private facility or other non-district program shall maintain on permanent file a written plan for in-service training of all staff involved in providing direct services to students, in accordance with Chapter Ed 500 *Certification Standards for Educational Personnel in New Hampshire.*

Ed 1133.05 PROGRAM REQUIREMENTS

(a) Each private program or other non-district program shall have a written description of admissions policies and criteria which it shall provide to all placing agencies and shall make available to the parent or guardian of any student referred for placement.

(b) The written admission policies and criteria required in (a) above shall include:

(1) Policies and procedures related to intake;

(2) The age and sex of students in care;

(3) The needs, problems, situations, or patterns best addressed by the program;

(4) Any other criteria for admission;

(5) Criteria for discharge; and

(6) Any preplacement requirements for the student, the parent or guardian, and/or the placing agency.

(c) Prior to enrollment, each private facility or other non-district program shall receive from the sending agency an individualized education program meeting all the requirements of Ed 1109.

(d) A private facility or other non-district program shall provide all facilities, equipment, and materials necessary for the implementation of any individualized education program or portion thereof which the facility has agreed to implement.

(e) The private facility or other non-district program shall implement all components of each student's individualized education program providing all special education and educationally related services in the amount and for the duration so specified and use teaching methods and materials as called for in each student's individualized education program.

(f) The private facility or other non-district program shall not unilaterally modify a student's individualized education program.

(g) Daily lesson plans shall be clear, concise, and reflective of the individualized education program goals for each student. They shall reflect any staff input and related reports and evaluations provided by the agencies responsible for the student's education and welfare.

(h) In each private facility or other non-district program, all students with educational disabilities shall have access to equal educational opportunities within their programs.

(i) A private facility or other non-district program shall have an established system of routine communication among all staff members of the program who provide direct services to a student, including both instructional and residential services. All staff members involved in providing direct services to a student shall participate in the process of planning for that student and shall know the contents of that student's individualized education program and all other reports and evaluations, as appropriate to their role and responsibilities.

(j) A private facility or other non-district program shall identify and utilize available resources, both on campus and in the community, which provide opportunities for experiences in the least restrictive environment.

(k) Duly licensed or certified, instruction, support, and related services personnel shall be provided by each private facility or other non-district program as required for the implementation of each student's individualized education program and necessary for the health and safety of all students.

Ed 1133.06 EVALUATION OF STUDENT PROGRESS

(a) Each private facility or other non-district program shall maintain progress information for each student on an ongoing basis.

(b) A mid-year review and annual evaluation of each student's progress relative to the written individualized education program shall be conducted by the sending agency and the private facility or other non-district program.

(c) If any student with educational disabilities is not making progress toward meeting his or her individualized education program goals at the rate anticipated, the facility shall contact the local education agency for the purpose of reviewing the individualized education program and considering modifications.

(d) Each private facility or other non-district program shall complete a minimum of 3 comprehensive reports per year on each student with disabilities enrolled. These reports shall:

(1) Describe the student's progress toward meeting the individualized education program goals;

(2) Include a record of attendance;

(3) Be written in language understandable to the parent; and

(4) Be provided to the sending agency and the parent or guardian of the student.

(e) Reports provided to parents shall be in the native language or other mode of communication used by the parent.

Ed 1133.07 CHILD MANAGEMENT TECHNIQUES

(a) Each private facility or other non-district program shall have a written statement of the policies and procedures followed by the program in managing student behavior. This statement shall be provided to the sending agency and the parent or guardian at the time each student becomes enrolled in the program, at the time of the annual review of the student's educational progress, and any time the facility or non-district program's policies and procedures for managing behavior are revised.

(b) A private facility or other non-district program shall not employ any disciplinary measure which subjects a student enrolled in that program to physical abuse, humiliation, or unsupervised confinement.

(c) Each private facility or other non-district program shall make provision to train staff in acceptable child management techniques. The program shall see that discipline is administered equitably and with respect and courtesy towards the student.

(d) Each private facility or other non-district program shall have a written procedure based on state and federal law concerning the reporting of suspected instances of child abuse.

Ed 1133.08 QUALIFICATIONS AND REQUIREMENTS FOR INSTRUCTIONAL, ADMINISTRATIVE, AND SUPPORT PERSONNEL

(a) All administrative, instructional, and related service staff shall hold appropriate certification for the position in which they function as required by the State of New Hampshire and evidence of the same shall be on record with the program.

(b) Each private facility or other non-district program shall maintain records containing evidence that each of the employees of that program meets the health requirements for public school employees in the State of New Hampshire in accordance with RSA 200:36.

(c) Each private facility or other non-district program shall have written procedures for supervising and evaluating the performance of all staff members.

(d) Each private facility or other non-district program shall have a written plan for in-service and pre-service training of staff, in accordance with the Certification Standards for Educational Personnel in New Hampshire.

(e) Each private facility or other non-district program shall have written job descriptions covering all staff positions which shall be made available to the Department of Education.

(f) Each private facility or other non-district program which offers swimming in its program shall provide written assurance that a qualified water safety instructor or senior lifesaver shall be on duty whenever students are in the swimming program.

Ed 1133.09 TERMINATION OF A STUDENT'S ENROLLMENT

(a) A private facility or other non-district program shall not terminate the enrollment of any student with educational disabilities without consulting with the student's parent or guardian, the sending agency, and any other agencies which have responsibility for the student's education or welfare. Such consultation:

(1) Shall take the form of a conference held 30 calendar days prior to the projected date of termination whenever possible; and

(2) The private facility or other non-district program shall provide all interested parties a written notification of the conferences. Such notice shall:

a. Be provided, whenever possible, at least 2 weeks prior to the date of the conference; and

b. Include an explanation of the reasons for termination of the student's enrollment.

(b) The conference shall include, but not be limited to:

(1) A discussion of possible alternatives to termination of enrollment;

(2) A detailed discussion of the program needs of the student;

(3) A discussion of any plans for alternative placement;

(4) A general review of the student's individualized education program;

(5) If applicable, a detailed discussion of the student's transition from his/her present program to an alternative placement; and

(6) If applicable, a complete plan and schedule for follow-up conferences between involved parties.

(c) Termination of enrollment in hospital-based schools, when such termination is for treatment-related reasons, shall be reported within 24 hours to the sending agency and after consultation with the parent or legal guardian.

(d) When such termination of enrollment occurs as a result of behavioral problems or unacceptable progress in the program, a private facility or other non-district program shall not terminate the enrollment of any student without exhausting all alternatives.

(e) In crisis situations, alternatives to termination of enrollment shall include but not be limited to a suspension of the student from the program for a maximum of 10 calendar days. The procedures and requirements described in Ed 1119.11 shall apply to all such suspensions.

(f) In non-crisis situations, alternatives to termination of enrollment shall include but not be limited to:

(1) Scheduling of a consultation conference with all interested parties to discuss and plan alternatives to termination of enrollment;

(2) A designated period of probation, determined in consultation with all interested parties, allowing the student time to meet specifically stated behavioral objectives;

(3) A specific written contract developed in consultation with all interested parties outlining the responsibilities of the student and each interested party during a designated period of probation; or

(4) A written document developed in consultation with all interested parties detailing the revisions in the current program to be made by the private facility or other non-district program to assist the student in meeting behavioral and/or academic standards.

(g) Each private facility or other non-district program shall provide written notification of any termination of enrollment in a program provided by such private facility or other non-district program to the parent or guardian of the student so terminated and the sending agency.

Ed 1133.10 **DUE PROCESS.** Each private facility or other non-district program shall ensure that all parents or guardians of students with educational disabilities have an opportunity to inspect and review all education records relating to the identification, evaluation, and educational placement of the student, in accordance Ed 1123.04(a)(2).

Ed 1133.11 **CLASS SIZE.** Each private facility or other non-district program shall conform to the requirements of Ed 1119.05 with respect to special education class sizes, teacher-student ratios, and the age range within each class.

Ed 1133.12 **CALENDAR REQUIREMENTS.** Each private facility or other non-district program shall provide a written annual school calendar identifying the instructional days per year and the instructional hours per day, in accordance with Ed 1119.09(b) and Ed 1119.10(a).

Ed 1133.13 **PHYSICAL FACILITIES**

(a) Each private facility or other non-district program shall ensure that the grounds and all structures on the grounds of the program are maintained in good repair and are free from any danger to health or safety.

(b) Each private facility or other non-district program shall develop a written schedule of maintenance and housekeeping activities to ensure that the grounds and facilities are safe and promote the health of students.

(c) Each private facility or other non-district program's recreational, dining, sleeping, bathroom, and kitchen facilities shall provide space and facilities according to New Hampshire school building standards to ensure the comfort and health of students.

(d) Each private facility or other non-district program shall have written procedures to protect students from hazards such as the presence of lead paint, storage of hazardous materials, garbage disposal, vermin infestation, storage of food, storage of medicines, electrical, plumbing, and heating systems.

(e) A private facility or other non-district program shall have securely locked storage spaces for all harmful, poisonous, or toxic materials that shall not be used for any other purpose. Keys to locked storage spaces shall be available only to authorized staff members.

(f) Fences shall be in good repair.

(g) Hazardous areas such as steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers to protect students.

(h) Playground equipment shall be so located, installed, and maintained as to ensure the safety of students.

Ed 1133.14 **TRANSPORTATION**

(a) Each private facility or other non-district program shall provide all transportation required within the school day for the implementation of any individualized

education program, or portion of any individualized education program, which the program has agreed to implement.

(b) All vehicles used to transport students shall be maintained in safe working order and be inspected and licensed according to the NH Department of Safety rules.

(c) All drivers of such vehicles shall be licensed according to these rules and trained in the specific techniques of transporting students with educational disabilities.

Ed 1133.15 CHILD CARE

(a) The residential components of all private facilities or other non-district programs shall meet all applicable federal, state, and local rules governing students' residential care.

(b) Each private facility or other non-district program shall be responsible for the total care of any student who resides at the program. The program shall attend to the physical and emotional health of resident students. The program shall provide resident students with regular nutritious meals, opportunities for proper exercise, age-appropriate recreational activities, and opportunities for positive social encounters.

(c) Each private facility or other non-district program shall provide properly qualified, trained, and supervised child care workers to staff residential programs.

(d) Each private facility or other non-district program shall take the responsibility for identifying students with emergent emotional or physical problems and consulting with the appropriate representatives of the sending agency and the student's parent or guardian. The private facility or other non-district program shall use the process of individualized education program revisions to ensure the provision of proper mental and medical health services to treat newly identified physical or emotional problems.

Ed 1133.16 HEALTH AND MEDICAL CARE

(a) Each private facility or other non-district program shall have written procedures to ensure that students receive prompt and competent medical attention in the event of injury or illness while participating in any program or activity.

(b) Each private facility or other non-district program shall have formulated written policies and procedures regarding the use and administration of medicine to students. Medication shall be dispensed only under medical order.

(c) Each private facility or other non-district program shall maintain locked storage space for prescription drugs which shall only be accessible to persons authorized to dispense them.

(d) Each private facility or other non-district program shall notify a student's parent(s) or guardian, sending agency, and state education agency immediately of any illness that is contagious or poses a health threat to students enrolled, accident, or death of any student.

Ed 1133.17 INSURANCE COVERAGE

(a) Each private facility or other non-district program which accepts prepayment of public funds, directly or indirectly, shall maintain adequate bonding. All persons delegated the authority to sign checks or manage funds shall be bonded at the program's expense.

(b) Each private facility or other non-district program shall carry insurance covering fire and liability as protection for students in care.

Ed 1133.18 PHOTOGRAPHY AND AUDIO OR AUDIO-VISUAL RECORDING

(a) Each private facility or other non-district program shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of students in care.

(b) The written consent of the student's parent or guardian shall be obtained before the student is photographed or recorded for research or for program publicity purposes.

Ed 1133.19 EMERGENCY PLANNING AND PREPAREDNESS

(a) Each private facility or other non-district program shall have written procedures for staff and students to follow in case of emergency or disaster. These procedures shall be developed with the assistance of state or local fire and safety personnel and shall include provisions for the evacuation of buildings and assignment of staff during emergencies.

(b) At least quarterly each private facility or other non-district program shall conduct emergency drills which shall include actual evacuation of students to safe areas. The program shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment available at the program.

(c) The following conditions shall apply to each such emergency drill:

(1) A record of such emergency drills shall be maintained;

(2) All persons in the building shall participate in emergency drills;

(3) Emergency drills shall be held at unexpected times and under varying conditions to prepare students for evacuation in case of fire or other disasters;

(4) The program shall make provisions to ensure that any students with physical disabilities are evacuated safely; and

(5) The program shall establish procedures to help students with emotional or perceptual disabilities understand the nature of such drills.

(d) Each private facility or other non-district program with residential components shall maintain an active safety program, including investigation of all accidents and recommendations for prevention.

CHAPTER Ed 1134
RATE SETTING

Ed 1134.01 DEFINITIONS

(a) "Accrual basis of accounting" means an accounting method which recognizes revenue when it is earned rather than when it is received, and expense is recognized when it is incurred rather than when it is paid.

(b) "Advertising costs" means those costs of media services, solicitations of bids for goods and services, recruiting personnel and development of school brochures and program descriptions.

(c) "Agency" means any private school, class or program which has been approved by the Department as a provider of special education and/or educationally related services.

(d) Allowable costs" means those costs determined by the Department to be reasonable and required for the operation of approved special education programs pursuant to Ed 1100.

(e) "Consultants" means lawyers, physicians, therapists, evaluators, independent public accountants, and other independent contractors who are members of a particular profession or possess a special skill.

(f) "DCYF" means the Division for Children, Youth and Families of the New Hampshire Department of Health and Human Services.

(g) "Department" means the New Hampshire Department of Education.

(h) "Direct costs" means costs which can be identified specifically with the organization's final cost objectives.

(i) "Indirect costs" means those costs which have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Examples of indirect costs are the salaries and expenses of executives, accounting, the costs of operating and maintaining facilities, depreciation allowances on buildings and equipment, and general administration expenses.

(j) "Length of the school year" means the total number of days during which the program provides services in the rate setting period.

(k) "Program capacity" means the maximum number of students that can be enrolled in a school, class or program as specified in Ed 1100.

(l) "Related party" means all affiliates of an enterprise, including but not limited to the following:

(1) Its management and their immediate families;

(2) Its principal owners and their immediate families;

(3) Beneficial employee trusts that are managed by the management of the organization; and

(4) Any party that may or does deal with the organization and has ownership of, control over, or can significantly influence the management or operating policies of another party to the extent that an arm's length transaction may not be achieved.

(m) "Reasonable costs" means those costs which are prudent, within cost limitations and are required for the operation of approved special education programs.

(n) "Special education costs" means the sum of all costs less applicable credits.

(o) "Student with educational disabilities" means a student as defined in RSA 186-C:2, I.

(p) "Surplus" means the positive net difference of revenue over expense from operations, regardless whether that difference is called surplus, profit, excess of support and revenue over expense, or fund balance increase on the entity's books of account.

Ed 1134.02 RATE SETTING PROPOSAL

(a) In order to obtain a rate for special education instruction, room and board, physical therapy, occupational therapy, speech therapy and counseling from the Department, the agency shall complete a budget proposal and submit it to the Department.

(b) The Department shall not act on any proposal which is incomplete, and/or which contains substantive errors or omissions. Any such proposal shall be returned for corrections and/or completion.

(c) The agency shall submit the following in the budget proposal:

(1) Form 1134 A: Cover Sheet;

(2) Form 1134 B: Personnel;

(3) Form 1134 C: Assets and Depreciation;

(4) Form 1134 D: Program Data;

(5) Form 1134 E: Revenues; and

(6) Form 1134 F: Expenses by Line Item.

Ed 1134.03 FORM 1134 A: COVER SHEET

(a) When completing Form 1134 A: Cover Sheet, the agency shall:

(1) Indicate whether the report being submitted is the original or an amended submission;

(2) Give the name, address, and telephone number of the agency;

(3) Give the accounting period: From_____ To_____;

(4) Give the name, title, and telephone number of the person completing the budget proposal;

(5) Give the name of the agency's authorized representative;

(6) Give the signature of the agency's authorized representative certifying that information within the budget proposal is correct and accurate to the best of the authorized representative's knowledge and that information was not deliberately omitted or falsified;

(7) Give the ownership type such as proprietorship, partnership, or corporation; and

(8) Give the operating agency type such as for profit or non-profit.

Ed 1134.04 FORM 1134 B: PERSONNEL

(a) When completing Form 1134:B Personnel, the agency shall:

(1) Indicate whether the report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year for which the personnel report is being prepared, the month and year on which the fiscal year begins, and the month and year the fiscal year ends;

(4) Give the name of the person who is preparing the original or amended personnel report;

(5) Give the date on which the original or amended personnel report is being prepared;

(6) Give each employee's full name;

(7) Give the field(s) of study and degree(s) received, if any, for each employee;

(8) Give each employee's annual wage or salary;

(9) Allocate that portion of each employee's wage or salary which pertains to administrative and general management activities;

(10) Allocate that portion of each employee's wage or salary which pertains to fund raising;

(11) Allocate that portion of each employee's wage or salary which pertains to other non-special education costs;

(12) Give the amount of each employee's wage or salary which pertains to special education instruction;

(13) Give the amount of each employee's wage or salary which pertains to any special education room and board costs;

(14) Give the amount of each employee's wage or salary which pertains to occupational therapy, physical therapy, speech therapy, and counseling activities;

(15) Give the total of general management costs, total costs of fund raising, and total costs of non-special education programs;

(16) Give the total of each employee's wage or salary which pertains to all special education programs; and

(17) Give the total of each employee's wage or salary which pertains to any special education room and board costs, and to occupational therapy, physical therapy, speech therapy, and counseling activities.

(b) The allocation in (10) above, shall be the percentage of each employee's total work time which pertains to this activity. Agencies which do not have a fund raising activity shall indicate "N/A".

(c) The allocations in (11) above, shall be the percentage of each employee's total work time which pertains to this activity. Entities which do not have special education costs shall indicate "N/A".

(d) The allocation in (12) above, shall be the percentage of each employee's total work time which pertains to special education instruction.

(e) The allocation in (13) above, shall be the percentage of each employee's total work time which pertains to any special education room and board costs.

(f) The allocations in (14) above, shall be the percentage of each employee's total work time which pertains to these activities.

Ed 1134.05 FORM 1134 C: ASSETS AND DEPRECIATION

(a) When completing Form 1134:C Assets and Depreciation, the agency shall:

(1) Indicate whether the report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year for which the assets and depreciation report is being prepared, the month and year on which the fiscal year begins, and the month and year the fiscal year ends;

(4) Give the name of the person who is preparing the original or amended assets and depreciation report;

(5) Give the date on which the original or amended assets and depreciation report is being prepared;

(6) Give the description of the item to be depreciated such as an electric typewriter or an automobile;

(7) Describe how the item was acquired, using the following codes:

a. "P" for items purchased;

b. "D" for items donated; and

c. "O" for other.

(8) If "O" was used to describe the acquisition of any item in (7) above, an explanation shall be provided at the bottom of the form;

(9) Give the month and year, using numerals, when the item was put into use or service;

(10) Give the number of items acquired;

(11) Give the amount actually paid for the item(s);

(12) Give the estimated salvage or trade-in value of the item(s) at the end of its/their useful life;

(13) Give the difference between the salvage value and the actual cost;

(14) Give the expected number of years during which the item(s) will be effectively usable;

(15) Give the quotient resulting from dividing the amount to be depreciated by the useful life;

(16) Give the percent of time that the item(s) will be used for programs or activities funded by the Department;

(17) Give the result from multiplying the total annual depreciation by the percent of the time the item(s) will be used for programs or activities funded by the Department of Education; and

(18) Give the total applicable annual depreciation amounts.

Ed 1134.06 FORM 1134 D: PROGRAM DATA

(a) When completing Form 1134:D Program Data, the agency shall:

(1) Indicate whether the report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year for which the program data report is being prepared, the month and year on which the fiscal year begins, and the month and year the fiscal year ends;

(4) Give the name of the person who is preparing the original or amended program data report;

(5) Give the date on which the original or amended program data report is being prepared;

(6) Give a listing of each special education program for which a rate is being requested;

(7) Give the maximum capacity of each program, as defined in Ed 1134.01(k), operating during the regular school year;

(8) Give the length of the regular school year for each program;

(9) Give the inclusive dates of the regular school year;

(10) Give the maximum capacity of each program operating during the summer school year as defined in Ed 1134.01(k);

(11) Give the length of the summer school for each program;

(12) Give the inclusive dates of the summer school year; and

(13) Give the actual occupancy figures for each of the 12 months immediately preceding the preparation of the budget proposal, or for each month of operation, if a shorter period than 12 months.

Ed 1134.07 FORM 1134 E: REVENUES

(a) When completing Form 1134 E: Revenues, the agency shall:

(1) Indicate whether the report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year for which the revenue report is being prepared, the month and year on which the fiscal year begins, and the month and year the fiscal year ends;

(4) Give the name of the person who is preparing the original or amended revenue report;

(5) Give the date on which the original or amended revenue report is being prepared;

(6) Give program service fees from sources other than the Department;

(7) Allocate costs among different funding sources when anticipated revenues for program funding come from sources other than the Department such as revenues from local and federal governments, Medicaid, Medicare, private insurance, and special purpose funds;

(8) Give all revenue from sales of goods or services related to programs;

(9) Give all income from direct sales, contracts or services;

(10) Give all funds from United Way;

(11) Give all funds from towns, cities and/or counties;

(12) Give income from restricted or unrestricted contributions;

(13) Give interest, dividends, and capital gain distributions in cash from endowments;

(14) Give any federal grants, including:

a. Funds to supplement the cost of providing education to students with educational disabilities;

b. Funds to purchase or subsidize the purchase of food and the value of food commodities; or

c. Any other federal grants.

(15) Give all revenues from non-endowment savings accounts;

(16) Give all interest under general management, unless the interest is restricted and allocated for a specific use or program;

(17) Give all recognized gains on the sale of assets;

(18) Give all other revenues;

(19) Give any surplus generated in the most recent fiscal year;

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(20) Give total of all revenue amounts;

(21) Give total general management revenue amount to be allocated as specified by the Department;

(22) Give total of all revenue amounts and general management amount to be allocated; and

(23) Give the amount of the Department fees they are requesting.

(b) All program service fees identified in (6) above shall be budgeted and reported.

(c) All revenue from private and public sources shall be budgeted and reported. All revenue in this category shall be allocated based on donor restrictions.

(d) All revenue line items shall be at least equal to prior year levels. If expected to be less, specific explanation and documentation shall be provided. The facility or entity shall apply for public and private sources of funds. If the facility or entity does not apply for public and private sources of funds, specific explanation and documentation shall be provided to the Department.

(e) Rental income which can be allocated to specific programs shall be allocated on the basis of square footage or full-time equivalents of the program(s) involved. All rental income that cannot be identified to specific programs shall be included in general management. This shall include income from rental of computer hardware and/or software, and time-sharing income.

(f) The following shall apply to revenue allocations:

(1) All revenues shall be reported and the appropriate allocations made;

(2) A tuition rate shall be computed from expenses for which no revenue has been received from the following sources:

a. Receipts from federal government;

b. Cash receipts which reduce the cost of an item; and

c. Donations and gifts.

(3) Agencies shall allocate costs among different funding sources when revenues come from:

a. Government contracts or grants;

b. Medicaid, medicare, private insurance; and

c. Specific purpose funds where applicable.

(4) Revenues and expenses of non-special education programs shall not be reported as special education activity; and

(5) Revenues received from school districts shall not be offset against costs when a tuition rate is calculated.

(g) Surplus equal to and for the purpose of funding 6 weeks' of wage and salary expense, including benefits and payroll taxes, may be retained by the entity and may be excluded from the amount of surplus to be carried forward.

Ed 1134.08 FORM 1134 F: EXPENSES BY LINE ITEM

(a) When completing Form 1134 F: Expenses by Line Item, the agency shall:

(1) Indicate whether the budget report being submitted is the original or an amended submission;

(2) Give the name of the agency;

(3) Give the fiscal year for which the budget report is being prepared, the month and year on which the fiscal year begins, and the month and year the fiscal year ends;

(4) Give the name of the person who is preparing the original or amended budget report;

(5) Give the date on which the original or amended budget report is being prepared;

(6) Give the total of expenses;

(7) Give the total general management expenses to be allocated; and

(8) Give expenses by line item as required in (b) - (ap) below.

(b) Salary and wages shall be recorded in account 601 and shall include and comply with the following:

(1) Payment for regular full and part-time personnel services accrued in whatever form by employees of the vendor during the fiscal year;

(2) Premiums for overtime, extra pay-shifts, and multi-shift work;

(3) All salary and wage costs shall be supported by documented payroll vouchers or a generally accepted documentation method; and

(4) Payroll shall be further supported by time and attendance records for individual employees.

(c) Employee benefits shall be recorded in account 602 and shall include and comply with the following:

(1) All group fringe benefit plans provided to regular full and part-time employees, such as, Blue Cross/Blue Shield, retirement plans, and worker compensation;

(2) Benefit plans shall be in conformance with state and federal law; and

(3) The cost of fringe benefit plans shall be a percentage of total salaries and wages by program.

(d) Temporary staff shall be recorded in account 603 and shall include and comply with the following:

(1) All temporary personnel costs associated with staffing coverage needed due to employee absenteeism and/or staff vacancies; and

(2) The amount of substitute coverage budgeted for direct service staff whose presence is considered essential for the day-to-day supervision of students shall be determined by documented use and costs.

(e) Payroll taxes shall be recorded in account 604 and shall include and comply with the following:

(1) All payments made for F.I.C.A. and unemployment. insurance;

(2) F.I.C.A. shall equal the prevailing rate multiplied by the total F.I.C.A. salaries per program;

(3) State and federal unemployment insurance shall equal the rate as determined by the applicable state and the federal agencies; and

(4) If an agency elects to fund an unemployment compensation reserve, the agency shall not also include unemployment tax as an expense item.

(f) Client evaluations shall be recorded in account 621 and shall include and comply with the following:

(1) All professional services purchased which are for purposes of obtaining any evaluations;

(2) This shall not include the cost of any full or part-time staff, as reflected in the personnel budget, whose responsibilities include student evaluations; and

(3) The amount budgeted for student evaluations shall be based upon past documented actual costs.

(g) Client treatment or services shall be recorded in account 622 and shall include all costs for purchasing specialized client services on a full or part-time basis.

(h) Accounting and audit fees shall be recorded in account 623 and shall include and comply with the following:

(1) The cost of accounting and auditing services supplied by outside providers, including check-writing and payroll fees; and

(2) These services shall not be provided by employees of, or other people who are affiliated with the agency. These costs shall be included in general management.

(i) Legal fees shall be recorded in account 624 and shall include and comply with the following:

(1) All legal service costs which the agency expects to incur in order to fulfill obligations to the Department;

(2) No funds shall be used to pay any legal fees that involve litigations or disputes against the Department or any other state agency; and

(3) No funds shall be used to pay any fines, payback or other court-ordered payments as a result of investigation or litigation against the facility or program.

(j) Other professional services and consultants shall be recorded in account 625 and shall include and comply with the following:

(1) Consultants and/or professional fees, such as program evaluations;

(2) Fees incurred for any type of staff development and/or training shall be reflected in the appropriate staff development line item; and

(3) Consultants' costs shall be allowed when;

a. The nature and scope of the consultant's services rendered are necessary, pertain to the organization's functions, activities or programs or to nutritional services, and cannot be provided by the organization's employees or can be more economically performed by consultants than by employees;

b. The fee charged for the service by the individual or concern shall be consistent with the customary fees charged by similarly qualified consultants for the service rendered, is reasonable in relation to the services rendered and shall be supported by specific rationale in support of fee(s) charged;

c. The contractual agreement for the services is adequately specific and shall at minimum include fees charged, services to be provided, number of days to be worked, beginning and end date of contract and a product evaluation;

d. The consultants are reasonable as defined in Ed 1134.12 and they are not involved with the recovery of costs or funds from federal, state or local government;

e. The consultants are not trustees, directors, officers or employees of the organization nor of any parent organization; and

f. The need for contracting the services is in relation to the organization's capability in the particular area.

(k) Journals and publications shall be recorded in account 631 and include the cost of all books, publications and training materials purchased for staff development/training purposes.

(l) In-service training shall be recorded in account 632 and shall include and comply with the following:

(1) All staff development and training costs for conferences, workshops, conventions, in-service training and tuition except for travel costs;

(2) Travel costs shall be shown in staff transportation;

(3) These staff development and training cost requests shall not exceed a total sum of money computed by multiplying the number of the program's full-time employees by $250;

(4) Costs of conferences or meetings shall be allowed when the primary purpose of the conference is dissemination of technical information and is part of the facility's approved staff development plan; and

(5) Allowable costs include meals, transportation, rental of facilities and other items incidental to such conferences.

(m) Conferences and conventions shall be recorded in account 633 and shall include and comply with the following:

(1) Expenses for attending any conferences, workshops, and conventions except travel costs; and

(2) Travel costs shall be shown in Account 742, Staff transportation.

(n) Other staff development shall be recorded in account 634 and include any development costs not covered by the accounts above such as an individual staff member's tuition.

(o) Rent shall be recorded in account 641 and shall include and comply with the following:

(1) The cost of renting any building utilized for the facility or program;

(2) Rental cost for space shall not exceed the cost of comparable space and facilities in the same locality;

(3) Rentals shall be documented by a lease agreement;

(4) Any leases shall stipulate the extent of the lessee's responsibility for renovations; and

(5) These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents;

a. Rental costs as specified in sale and leaseback agreements shall be allowable to the extent of actual costs had the organization continued to own the property; and

b. The cost of lease-purchase agreements shall be excluded as a rental expense.

(p) Heating costs shall be recorded in account 643 and shall include and comply with the following:

(1) All heating costs, such as electricity, gas or oil;

(2) These costs shall be excluded if they are including a rental or lease agreement; and

(3) These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents.

(q) Other utilities shall be recorded in account 644 and shall include and comply with the following:

(1) All other utility costs, such as electricity, water, sewage, gas;

(2) These costs shall be excluded if they are included in a rental or lease agreement; and

(3) These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents.

(r) Maintenance and repairs shall be recorded in account 645 and shall include and comply with the following:

(1) The costs of materials and supplies needed for routine maintenance and repairs and/or maintenance contracts such as garbage removal and snow plowing;

(2) These costs shall be excluded if they are included in a rental or lease agreement;

(3) These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents; and

(4) The following shall apply to repair and maintenance of plant:

a. Costs incurred for necessary maintenance, repair and upkeep of property which do not add to its useful life but keep it in efficient operating condition shall be allowable when they are not included in rental or other charges for space; and

b. Costs incurred for necessary maintenance, repair or upkeep of movable equipment which keep it in efficient operating condition shall be allowable.

(s) Taxes shall be recorded in account 646 and shall include and comply with the following:

(1) Taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles and payments made to local governments shall be allowable;

(2) These costs shall be cost-allocated to programs and general management based upon square footage or full-time equivalents; and

(3) Taxes for which an exemption is available and payments in lieu of taxes shall be disallowed.

(t) Other occupancy costs shall be recorded in account 647 and shall include and comply with the following:

(1) Any other occupancy costs not covered by above accounts; and

(2) Renovation costs shall be included in account 660, Capital expenditures.

(u) Office supplies shall be recorded in account 651 and shall include and comply with the following:

(1) Costs of consumable materials used for office operations, such as paper, pens, notebooks, printed checks, photocopy supplies; and

(2) These costs shall be cost-allocated to programs and general management based upon direct costs or full-time equivalents.

(v) Building and household supplies shall be recorded in account 652 and shall include and comply with the following:

(1) Costs of consumable supplies used for buildings and grounds as well as all household supplies such as toilet paper, towels, crockery, flatware, cleaning supplies; and

(2) These costs shall be cost-allocated to programs and general management based upon direct costs or full-time equivalents.

(w) Educational and training supplies shall be recorded in account 653 and shall include and comply with the following:

(1) Costs of materials used in student programs, such as paper, pens, paint brushes, sets of practice materials, magazine or book subscriptions for students' use: and

(2) These costs shall be cost-allocated to programs and direct costs or full-time equivalents.

(x) Production and sales shall be recorded in account 654 and shall include and comply with the following:

(1) The cost of materials which are purchased for the purpose of making products which are to be sold; and

(2) The production and sales expense shall not be more than the revenue generated from sales.

(y) Food shall be recorded in account 655 and shall include the cost of raw or prepared food goods.

(z) Medical supplies shall be recorded in account 656 and shall include and comply with the following:

(1) The costs of services which would be available to students if they were enrolled in a public school;

(2) Costs of speech, physical or occupational therapy, or counseling if included in a student's individualized education program, shall be allowable under a separate rate setting program and shall not be included as part of instruction and room and board rates;

(3) The cost of a medical examination for an employee or applicants for employment, or the cost of furnishing any records required by the employer as a condition of employment shall be allowable; and

(4) Other medical services or the costs of medical supplies provided by the agency's own staff shall not be included in this account. These costs are not allowed and shall be included in the non-special education section of expenditure Form 1134F.

(aa) Capital expenditures shall be recorded in account 660 and shall include and comply with the following:

(1) The cost of furnishings and equipment valuing more than $1,000 for each item;

(2) Groups of items valuing $1,000 or more, even if individual items are valued at less then $1,000, shall be depreciated;

(3) Compensation for the use of buildings, or other capital improvements and equipment shall be made through depreciation charges;

(4) All other asset items used for program purposes costing $1,000 or more having a useful life of one year or more shall be depreciated;

(5) Reimbursement for capital expenditures shall be available through depreciation charges only;

(6) Depreciation charges shall be based on historical acquisition cost less estimated salvage value of the asset;

(7) Useful life shall be determined on the basis of the particular operating conditions and the generally accepted useful life of similar assets;

(8) Adequate property records shall be maintained and the straight-line method of computing depreciation shall be used;

(9) All capital expenditures including purchases, major renovations and leasehold improvements for which Department reimbursement is requested shall be included in the budget proposal;

(10) Any expenditure not so included shall not be reimbursed;

(11) The need to fund extraordinary or emergency capital expenditures shall be approved;

(12) These costs shall be cost allocated to programs and general management based upon square footage or full-time equivalents;

(13) Gains and losses on sale, retirement, or other disposition of property which qualify as depreciable shall be reflected as a credit or a charge to the program in which the asset was being used. The amount of the credit or charge shall be the difference between the amount realized on the asset and the undepreciated basis and no gain or loss from the sale of depreciated property shall be recorded as a credit or charge under the following conditions:

a. The gain or loss is or could be processed against a depreciation account;

b. The property is given in exchange as part of the price of a similar asset and the gain or loss is taken into account in determining the depreciation costs basis of the new asset;

c. A loss occurs from the failure to maintain permissible insurance;

d. Gains or losses resulting from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis; and

e. Gains or losses resulting from the sale or exchange of non-special education assets or those not qualifying for depreciation are not allowable.

(14) The following shall be excluded from allowable depreciation expense:

a. Cost of land;

b. Donated assets or assets purchased with donated funds;

c. Assets acquired through grants from federal, state or local governments, or from private organizations, foundations, or companies;

d. Idle or excess assets; and

e. Depreciation expense computed under methods other than the straight line method.

(ab) Equipment rental shall be recorded in account 670 and shall include and comply with the following:

(1) Costs of renting equipment, such as typewriters; and

(2) The renting of postage meters shall be included in account 730, Postage.

(ac) Equipment maintenance and repairs shall be recorded in account 680 and shall include costs of equipment repairs, and service maintenance contracts or agreements.

(ad) Advertising shall be recorded in account 700 and shall include and comply with the following:

(1) Advertising costs for employee recruitment only;

(2) Other advertising costs shall not be allowed;

(3) The costs of media services such as a newspaper, magazines, radio resulting from the recruitment of personnel, the solicitation of bids for goods and services and development of school brochures and program descriptions; and

(4) All other advertising, public relations or community education costs which cannot be demonstrated to have direct benefit to the education program shall not be allowable and shall be recorded in a program cost center not included in the special education rate base.

(ae) Printing shall be recorded in account 710 and include costs of printing forms, leaflets and brochures, if the costs are specifically related to programs funded by the Department.

(af) Telephone and communications shall be recorded in account 720 and include costs related to telephones, telegrams, and similar communications expenses.

(ag) Postage and shipping shall be recorded in account 730 and include costs related to postage stamps, trucking, delivery, and rental of postage meters.

(ah) Vehicle leasing, maintenance and repair shall be recorded in account 741 and shall include and comply with the following:

(1) Vehicle lease expense for vehicles used for program purposes;

(2) Attach copies of vehicle leases and registrations. The purchase of a vehicle shall be depreciated; and

(3) Cost related to vehicle maintenance and repair.

(ai) Client and staff transportation shall be recorded in account 742 and shall include and comply with the following:

(1) Costs of travel directly related to the school education program;

(2) Costs of transportation to and from a student's home to the school program shall be the responsibility of the local school district and shall be excluded from the tuition rate;

(3) The agency shall be compensated for the lease, purchase, maintenance and use of vehicles provided when they are needed for an approved education program;

(4) Transportation, lodging, subsistence and related items incurred by employees who are on official business incidental to a special education program;

(5) Such costs shall be charged on an actual cost basis or per diem/mileage basis provided that the method chosen is consistently applied to each event;

(6) Cost of mileage for the business use of private vehicles at a rate not to exceed the prevailing reimbursement rate per mile used by the State of New Hampshire;

(7) If vehicles are leased or rented and include so-called "Free Mileage", such mileage is not eligible for reimbursement;

(8) Any portion of vehicle expense which is reimbursed through depreciation charges shall be excluded from the mileage reimbursement rate; and

(9) Cost of gasoline for leased or purchased facility vehicles used for program purposes.

(aj) Professional liability and bonding shall be recorded in account 761 and include all costs to meet the Department's requirements for professional liability and bonding.

(ak) Vehicle insurance shall be recorded in account 762 and include all vehicle insurance costs.

(al) Comprehensive property and liability insurance costs shall be recorded in account 763 and shall include and comply with the following:

(1) Comprehensive property and liability and directors' and officers' insurance costs;

(2) Comprehensive general liability insurance against all claims of bodily injury, death, and property damage or loss shall be in amounts of not less than $250,000 per claim and $1,000,000 per incident;

(3) Fire and extended coverage insurance covering all property shall be in an amount not less than 80% of the whole replacement value of the property;

(4) Self-insurance costs but only if the agency provides documentation to show that sufficient self-insurance coverage is maintained to guard the program against those losses which would have been normally covered if the agency had purchased the appropriate level of insurance;

(5) Only employee group insurance plans shall be approved;

(6) Costs resulting from losses not covered under deductible insurance policy provisions, contracted for and in keeping with sound business practice; and

(7) Actual losses which could have been covered by permissible insurance shall be excluded.

(am) Membership dues shall be recorded in account 770 and shall include and comply with the following:

(1) Dues, memberships and subscriptions in civic, business, technical and professional organizations;

(2) Costs shall be allowable only when the benefit from membership is related to the organization's special education programs, the cost is reasonable in relation to the value or benefits received, and the expense is not for membership in an organization which devotes a substantial part of its activities to influencing legislation;

(3) The total allowable amount of Department funds that may be used for this expense shall not exceed $2,000; and

(4) Any amount over $2,000 shall be shown under non-special education funded programs.

(an) Interest expense shall be recorded in account 780 and shall include and comply with the following:

(1) Interest costs for the purchase or improvement of capital assets which have been approved;

(2) Interest on loans for working capital that are directly related to cash flow deficiencies which are beyond the entity's ability to control;

(3) The interest rate shall not exceed the prevailing rates at the time the loan was secured;

(4) Interest charges shall not be at a rate in excess of what a borrower would pay at the time the loan was taken;

(5) Interest charges for borrowing for land, buildings and working capital that is in excess of program requirements shall be excluded; and

(6) Working capital as used in this section shall mean a loan obtained to provide temporary cash in order to meet a current cash shortfall arising from time differences between expense and revenue cycles. The entity shall bear responsibility for providing documentation that working capital deficiencies were beyond its control.

(ao) Other expenditures shall be recorded in account 800 and include any other program costs not included in any of the above line items.

(ap) Parent overhead shall be recorded in account 900 and shall include and comply with the following;

(1) Charges to an organization's programs from a parent or affiliated organization provided that the charges are defined as allowable costs and that the charges are allocated to all programs on the same basis; and

(2) If a program or facility includes charges for general management, parent overhead charges shall not also be reimbursable.

Ed 1134.09 GENERAL RATE SETTING INFORMATION

(a) Tuition rates shall be set based on the agency's budget proposal which shall be submitted on those forms prescribed in Ed 1134.02. Deadline for submission of all prescribed forms shall be the first of April, each year.

(b) Any adjustments to the agency's budget proposal shall be made by the Department based solely upon these rules and evaluation of required budget materials and information.

(c) Rates shall become effective on July first, each year, or on the agency's program start date, whichever is later. The rate shall remain in effect through June 30 of the following year, or on the agency's program end date, whichever occurs first.

(d) Once the Department has established a final rate for an agency, no further adjustments shall be made to the rate(s) for the fiscal year in which the agency's budget proposal was submitted.

(e) The Department shall notify the agency by certified mail of the established rate(s).

(f) The daily and annual rate(s) established through this process shall be the maximum reimbursement paid to the agency on a per-student basis.

(g) Any parent organization or related party providing services, facilities, or supplies to an agency submitting a budget proposal shall make available documentation including but not limited to invoices, leases, loan-notes, insurance policies supporting the related party costs. The related party costs shall be considered services for the purposes of establishing rates.

(h) Each agency shall establish a chart of accounts reflecting the functions specified in (i) below and shall maintain accounting records in accordance with the chart.

(i) All revenues and expenditures shall be assigned to the following functions:

(1) General Management;

(2) Fund Raising;

(3) Other non special education costs;

(4) Special education programs - Instruction;

(5) Special education programs - Room and Board costs;

(6) Special education programs - Occupational therapy;

(7) Special education programs - Physical therapy;

(8) Special education programs - Speech therapy; and

(9) Special education programs - Counseling.

(j) Rates for out-of-state agencies shall be set at the rate established by the rate setting authority in the state where the agency is located. In states where no rate setting authority exists, the Department shall establish the rate payable to the agency through application of these rules. Requests for rate changes for out-of-state agencies shall be accompanied by a copy of the revised official rate notification from the rate setting authority in the state where the agency operates.

(k) Each agency shall submit the following information:

(1) A complete rate setting proposal as specified in Ed 1134.02(c)(1)-(6); and

(2) Actual data from the previous year to allow the Department to compare the budget to actual expenditures for the year.

(l) The agency shall submit a copy of the audited financial statements and special report made by an independent public accountant as specified in Ed 1134.18. The actual data and independent auditors' reports shall be due within 120 days of completion of the fiscal year. The financial statements shall at a minimum contain supplemental schedules using the same line items and functions used in the budget submitted with the rate request.

(m) A semi-annual Summary of Revenues and Expenditures report shall be prepared using the same line items and functions as used in preparation of the budget. The first summary shall contain information for the first 6 months of the fiscal year and shall be submitted with the rate setting proposal.

Ed 1134.10 ALLOWABLE COSTS

(a) To be considered an allowable special education cost the following criteria shall be met:

(1) The cost shall be reasonable within the definition of Ed 1134.12;

(2) The cost shall have a direct relationship to the policies and procedures of the organization;

(3) The cost shall be recognized by and reported in accordance with generally accepted accounting principles;

(4) The cost shall be supported by documentation including but not limited to invoices, leases, loan-notes, insurance policies and service contracts; and

(5) The cost shall pertain and be readily identifiable to an activity, function or program;

(b) If personal vehicles or living accommodations are prerequisites for certain positions such expenses shall be approved.

Ed 1134.11 NON-ALLOWABLE COSTS

(a) The following shall not be allowed as special education costs:

(1) Political and charitable contributions;

(2) Investment expenses which are in excess of investment income;

(3) Amusement of facility or program officers or employees or for non-organization related activities, entertainment, and any related costs such as meals, lodging, rentals, transportation and gratuities;

(4) Ordinary living expenses which are normally assumed by parents of children attending public day schools;

(5) Fees and expenses of trustees and directors;

(6) Fines and penalties which are imposed by a court and/or which result from violations of or the failure to comply with federal, state, county or municipal law, rule, or regulation;

(7) Bad debts, actual or estimated, resulting from uncollectible accounts or other claims, and related collection and legal costs;

(8) Contributions to a contingency fund or any similar fund except for an unemployment reserve fund;

(9) Advertising expenses except for personnel recruitment, bids for goods and services, school brochures, solicitation and medical services;

(10) Organized fund raising expenses in excess of revenue received and applied to Department programs;

(11) The following organized fund raising costs:

a. Solicitations of gifts;

b. Bequests;

c. Organized fund raising;

d. Financial campaigns; and

e. Endorsement drives.

(12) Voluntary payments and contributions such as payments in lieu of real estate taxes;

(13) Any expenses of the organization which are not reasonable as defined in Ed 1134.12 or unrelated to required special education or necessary educationally related services;

(14) Management fees or payments included in lease or rental agreements between parties who are related as defined in Ed 1134.01(l);

(15) Reimbursement for expenditures or depreciation of personally owned or leased assets excluding motor vehicles;

(16) Income and business profits taxes;

(17) Bonuses of any nature conveyed and/or paid;

(18) Charges by parties who are related as defined in Ed 1134.01(l) for services, facilities, and supplies furnished to the operating entity if such charges exceed the cost to the related party for providing the services, facilities or supplies;

(19) Charges for investment counsel, staff and similar expenses incurred solely to enhance income from investments;

(20) All personal expenses such as:

a. Personal travel expenses;

b. Laundry charges;

c. Beverage charges;

d. Gift certificates to staff and vendors;

e. Flowers or parties for departing staff;

f. Holiday parties;

g. Repairs on a personal vehicle; and

h. Rental expenses of personal apartments.

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(21) Medical services and supplies, other than those cited in Ed 1134.08(z); and

(22) Medical supplies or costs of medical supplies provided by the agency's own staff.

Ed 1134.12 REASONABLE COSTS

(a) The reasonableness of specific costs shall be determined by the Department by applying (b), below

(b) Costs shall be allowed provided they can be justified by one or more of the following criteria:

(1) The cost shall be of a type recognized as necessary for the operation of the organization or performance of an activity or function of the program;

(2) The cost shall be in compliance with requirements imposed by accepted sound business practices, arm's length bargaining, federal and state law, rules of the State Board of Education, or generally accepted accounting principles;

(3) The cost request shall not deviate by more than 5% from the average cost incurred in facilities and/or circumstances which are similar;

(4) Year to year cost increase requests shall not deviate by more than 1 percentage point from those cost increases as measured by such price indices as The Consumer Price Index or other similar publications from the New Hampshire Department of Employment Security or United States Department of Labor; and

(5) The cost request can be explained by a minimum 10% fluctuation in school enrollment from year to year.

Ed 1134.13 DIRECT COSTS

(a) Costs identified specifically with activities required for operation of an approved facility, function or program shall be treated as direct costs.

(b) If costs are not allowable as special education costs, they shall be treated as direct costs and allocated with their share of the organization's indirect costs when they represent activities which:

(1) Include the salaries of personnel;

(2) Occupy space; or

(3) Benefit from the organization's direct costs.

Ed 1134.14 INDIRECT COSTS

Indirect costs shall be allocated to all of the organization's activities pursuant to Ed 1134.16.

Ed 1134.15 BASIS OF ACCOUNTING

The system for reporting special education costs shall be based on the accrual basis of accounting.

Ed 1134.16 METHOD OF ALLOCATION

(a) When an organization has only one major purpose or when all its major functions benefit from its indirect costs to approximately the same degree, the direct allocation method shall be used. Under the direct allocation method all costs except general administration shall be treated as direct costs.

(b) Costs shall be separated into 9 basic functions as outlined in Ed 1134.09(i).

(c) Joint costs means those costs which directly benefit multiple final cost objectives of an organization and include such costs as depreciation, operation and maintenance of facilities, telephone and utilities. Such costs shall be prorated individually as direct costs of each function using a base appropriate to the costs being prorated.

(d) Indirect costs consisting exclusively of general administration and general expenses shall be distributed to the organization's functions using total direct costs of each activity as a base.

(e) Organizations proposing to treat indirect costs in a manner different from (a) and (b) above shall submit a waiver request to the Department and which shall:

(1) Be in writing;

(2) Signed by the person who has prepared the rate setting proposal; and

(3) Be submitted not later than 120 days prior to the submission of a new rate proposal.

(f) The Department shall approve all requests received pursuant to (e) above unless said request(s) violate any requirement of Ed 1134 or a standard cost accounting principle.

Ed 1134.17 RATE COMPUTATION FOR INSTRUCTION, ROOM AND BOARD, OCCUPATIONAL THERAPY, PHYSICAL THERAPY, SPEECH THERAPY AND COUNSELING

(a) The rate for a special education program shall be calculated as follows:

(1) The agency shall compute the net expenses of the program which shall be equal to the total expenses from Form 1134F less the total revenues from Form 1134E;

(2) The agency than shall multiply the program capacity rate by 90%;

(3) The agency shall compute the annual rate by dividing the net expenses of the program by 90% of the program capacity rate; and

(4) Finally, the agency shall compute the daily rate by dividing the annual rate by the length of the school year.

Ed 1134.18 AUDIT REQUIREMENTS

(a) Audits shall be made in accordance with the U.S. Office of Management and Budget Circular A-133, titled Audits of Institutions of Higher Learning and other Non-Profit Institutions which was published in the Federal Register March 16, 1990 (55FR10019).

(b) Audits shall include an examination of the systems of internal control, systems established to insure compliance with laws and rules affecting the expenditure of local education agency funds, and financial transactions and accounts.

(c) The examinations required by (b), above, shall be used to determine whether:

(1) There is effective control over and proper accounting for revenues, expenses, assets and liabilities;

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles;

(3) The Department financial reports contain accurate and reliable financial data; and

(4) Local education agency funds are being expended in accordance with the terms of the special education cost manual.

(d) In order to accomplish the above purposes cited in (c) above, a representative number of charges to special education programs shall be tested to determine whether the charges:

(1) Are required for the proper administration of the program;

(2) Were given consistent accounting treatment and applied uniformly to all activities of the organization;

(3) Were net of applicable credits;

(4) Did not include costs properly chargeable to the organization's other programs;

(5) Were properly recorded with the correct amount and date and supported by source documentation;

(6) Were approved in advance; and

(7) Were allocated equitably to benefiting activities, including non-special education activities.

(e) Audits shall be made annually and the audit report shall include:

(1) Financial statements, including footnotes, of the organization;

(2) The auditors' comments on the financial statements which shall:

a. Identify the statements examined and the period covered;

b. Identify the various special education programs for which a rate was set and the amounts of local education agency funds received;

c. State that the audit was done in accordance with Ed 1134.18;

d. Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles, but if an unqualified opinion cannot be expressed than the nature of the qualification shall be stated; and

e. Comment on the accuracy and completeness of the Department financial reports, including an expression of negative assurance with respect to compliance with Ed 1134.

(3) Workpapers and reports shall be retained for a minimum of 3 years from the date of the audit report unless the auditor is notified in writing by the Department of the need to extend the retention period. The workpapers shall be made available upon request to the Department.

Ed 1134.19 RATE NOTIFICATION

(a) The Department shall notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).

(b) The agency shall review the notification and schedule of adjustments. If the agency has questions and/or problems with the tentative rate(s) the agency shall request a meeting with the Department's rate setter within 14 working days of receipt of the notification letter from the Department which states the tentative rate(s).

(c) The request for a meeting with the Department's rate setter shall state the specific reasons why the agency feels there was an error in the tentative rate(s).

(d) Unless a written request for a meeting with the Department's rate setter is received by the Department within 14 working days of the agency's receipt of the letter or other written notification from the Department which states the tentative rate(s), the tentative rate(s) shall become final.

(e) If the agency requests a meeting with the Department's rate setter concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by the Department's rate setter of his/her right to a review pursuant to Ed 1134.20.

(f) During any review held pursuant to Ed 1134.20, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the Department, the agency may bill-for-services at the tentative rate(s).

Ed 1134.20 HEARING MECHANISM FOR SPECIAL EDUCATION RATES

(a) A private provider of special education services making a request for reconsideration of the rates established by the Department shall adhere to the procedures set forth in (b) - (d) below.

(b) A request for reconsideration shall be filed within 14 days of the date of the receipt of the notification letter which states the rate(s) and which is sent by the state to the agency.

(c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the Director, Division of Instructional Services, New Hampshire Department of Education.

(d) The request for reconsideration shall state the specific reasons why the agency feels there was an error in the original determination.

(e) The Director shall render a decision in writing regarding the request within 14 days of the date on which the letter is received by the state. If the Director determines that the request for reconsideration reasons are vague, he/she shall require that the agency file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.

(f) If the Director agrees with any or all portions of the agency's request for reconsideration, the Department's rate setter shall recalculate the agency's rate(s) accordingly.

(g) If the Director does not agree with any or all portions of the agency's request for reconsideration, the Director shall notify the agency of his/her decision pursuant to the requirements set forth in (e) above.

(h) Agencies who wish to appeal the decision of the Director pursuant to Ed 1134.20,(e) shall do so by filing an appeal with the Commissioner of Education, New Hampshire Department of Education.

(i) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.

(j) The appeal shall be filed within 14 days of the date of the notification letter which states the decision of the Director which is sent by the Department to the agency.

(k) The appeal shall be heard under RSA 541-A:16-21 by the Commissioner of Education or his/her designee and in accordance with Ed 200.

Ed 1134.21 THE JOINT RATE SETTING PROCESS

(a) The Department shall administer the joint rate setting process pursuant to the requirements of Ed 1134.21, Ed 1134.22 and Ed 1134.23.

(b) The Department of Health and Human Services has agreed to administer the joint rate setting process pursuant to the requirements as set forth in Ed 1134.21, Ed 1134.22 and Ed 1134.23.

(c) Interdepartmental standard operating procedures and an interagency subagreement signed by The Commissioner of the Department of Health and Human Services and The Commissioner of the Department of Education in April of 1991, shall be used as the basis for the administration of the joint rate setting process.

(d) When rates are jointly set by DCYF and the Department in accordance with RSA 170-G:4, any conflicts identified by the state agencies existing between rate setting rules HE-C 6422 and Ed 1134 shall be resolved by both state agencies applying the stricter of the 2 sets of rules.

Ed 1134.22 JOINT RATE NOTIFICATION

(a) The Department and DCYF shall notify the agency by certified mail of the tentative rate(s) and the notification shall include any schedule of adjustments used in the determination of the tentative rate(s).

(b) The agency shall review the notification and schedule of adjustments. If the agency has questions and/or problems with the tentative rate(s) the agency shall request a joint meeting with the Department's rate setter and the DCYF rate setter within 14 working days of receipt of the notification letter from the Department and DCYF which states the tentative rate(s).

(c) The request for a joint meeting with the Department's rate setter and the DCYF rate setter shall state the specific reasons why the agency feels there was an error in the tentative rate(s).

(d) Unless a written request for a meeting with both of the state's rate setters is received by the Department and DCYF within 14 working days of the agency's receipt of the notification letter from the Department of Education and DCYF which states the tentative rate, the tentative rate(s) shall become final.

(e) If the agency requests a joint meeting with both of the state's rate setters concerning the tentative rate(s) and the results of that meeting do not satisfactorily resolve the concern(s) of the agency, the agency shall be informed by both rate setters of his/her right to review pursuant to Ed 1134 and HE-C 6422.

(f) During any review held pursuant to Ed 1134 and HE-C 6422, the agency's most recent approved final rate(s) shall remain in effect for billing purposes. If the agency has not had a previously approved final rate(s) adopted by the Department and DCYF, the agency may bill-for-services at the tentative rate(s).

Ed 1134.23 HEARING MECHANISM FOR JOINTLY SET SPECIAL EDUCATION RATES

(a) A private provider of special education services making a request for reconsideration of the rates established jointly by the Department and DCYF shall adhere to the procedures set forth in (b) - (d) below.

(b) A request for reconsideration shall be filed within 14 days of the date of receipt of the notification letter which states the rate(s) and which is sent by both state agencies to the private provider.

(c) A request for reconsideration shall be made in writing, shall be signed by a person duly authorized by the agency to submit the request for reconsideration and shall be filed with the Director, DCYF and the director, Division of Instructional Services, New Hampshire State Department of Education or their designees.

(d) The request for reconsideration shall state the specific reasons why the agency feels there was an error in the original determination.

(e) Both directors or their designees shall render a joint decision in writing regarding the request within 14 working days of the date on which the letter is received by both state agencies. If the directors or their designees determine that the request for reconsideration reasons are vague, they shall require that the private provider file a more detailed statement of request for reconsideration. In such case, the requirements specified in (b) - (d) above shall apply to any such statements.

(f) If the directors agree with any or all portions of the agency's request for reconsideration, both state rate setters shall recalculate the agency's rates accordingly.

(g) If the directors do not agree with any or all portions of the agency's request for reconsideration, the directors shall notify the agency of their decision pursuant to the requirements set forth in (e) above.

(h) Agencies who wish to appeal the decision of both state directors pursuant to Ed 1134.23(e) shall do so by filing an appeal with the Commissioner, Department of Education, and the Commissioner, Department of Health and Human Services.

(i) The appeal shall be made in writing, shall be signed by a person duly authorized by the agency to submit the appeal and shall state specific reasons for the appeal.

(j) The appeal shall be filed within 14 days of the date of the letter or other written notification which states the decision of the directors or their designees which is sent by the Department and DCYF to the agency.

(k) The appeal shall be heard under RSA 541-A:16-21 by the Commissioner of Education and the Commissioner of the Department of Health and Human Services or their designees in accordance with Ed 200 and HE-C 200.

CHAPTER Ed 1135
SEVERABILITY

Ed 1135.01 If any provisions of these standards are found by a court of competent jurisdiction to be invalid, such findings shall not be construed by those responsible for implementing or complying with these rules to affect the validity of any other provision of these rules which shall remain in full force and effect.

CHAPTER Ed 1136

PROVISION OF EDUCATIONAL SERVICES TO STUDENTS WITH EDUCATIONAL DISABILITIES COMMITTED TO THE YOUTH DEVELOPMENT CENTER BY COURT ORDER

Ed 1136.01 FREE AND APPROPRIATE PUBLIC EDUCATION. It is the intent of this part to assure the provision of a free and appropriate public education to committed juveniles with educational disabilities, given the constraints of institutional placement and the provisions of law which recognize the authority of the court to order placement at the Youth Development Center, which necessarily restricts the availability of choices of educational services which might otherwise be available for such individuals.

Ed 1136.02 EXTENDED SCHOOL YEAR

(a) The individualized education programs of all students with educational disabilities who are at the Youth Development Center on March 1 shall be reviewed prior to April 1 for consideration of whether an extended school year program is appropriate under Ed 1111.

(b) When an extended school year is being considered, the liable local education agency shall be notified on or before April 15.

(c) The individualized education program team shall make a final decision regarding the provisions of an extended school year program on or before April 30 of the current school year.

(d) The individualized education programs of all students with educational disabilities who arrive at the Youth Development Center subsequent to March 1 shall be reviewed as soon as possible to determine whether an extended school year program is appropriate under Ed 1111. The school district shall be notified within 15 days to consider such individualized education program modifications and additions as are necessary to implement the extended school year program.

(e) To the extent possible, Youth Development Center resources shall be used in the provision of the extended school year program.

(f) The local education agency shall be liable for the costs of any additional extended school year services mutually agreed upon by the local education agency and the institution.

Ed 1136.03 VOCATIONAL ASSESSMENTS AND PLACEMENTS OF STUDENTS WITH EDUCATIONAL DISABILITIES

(a) The need for vocational assessment of a student at the Youth Development Center shall be determined by the special education evaluation team of the liable local education agency.

(b) Vocational assessments shall be conducted, when possible, using resources available at the Youth Development Center.

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(c) Assessment procedures in excess of the resources available at the Youth Development Center shall be provided at local education agency expense.

(d) Any vocational education placement outside the institutional setting shall be subject to procedures for release of a juvenile from the Youth Development Center as set forth in RSA 170-H or work/education programs at the Youth Development Center.

(e) Vocational assessment and placement of students with educational disabilities for students at the Youth Development Center shall be conducted according to the provisions of Ed 1107, Ed 1109, and Ed 1113.

Ed 1136.04 MAINTENANCE OF EFFORT IN THE PROVISION OF YOUTH DEVELOPMENT RESOURCES

(a) The Youth Development Center shall maintain and provide to local education agencies a listing of all personnel, material, and physical resources that can be applied to evaluations and the implementation of individualized education programs.

(b) A liable local education agency shall bear financial responsibility for special education or special education and educationally related services for a committed student with educational disabilities that exceed the available Youth Development Center resources.

(c) The Youth Development Center shall continue to maintain a level of special education and educationally related services which shall be available to meet the needs of committed students with educational disabilities while resident at the Youth Development Center, within the extent of its legislative appropriation.

Ed 1136.05 REQUIREMENTS FOR THE DEVELOPMENT AND OPERATION OF YOUTH DEVELOPMENT CENTER PROGRAMS FOR STUDENTS WITH EDUCATIONAL DISABILITIES

Criteria set forth in the following standards for the delivery of special education services, shall be applied to the provision of programs for committed juveniles with educational disabilities placed at the Youth Development Center: Ed 1133.03(c) through Ed 1133.03(g), Ed 1133.08(d); Ed 1133.05; Ed 1133.06; Ed 1133.10; Ed 1133.11; and Ed 1133.12.

CHAPTER Ed 1137
STUDENTS WITH EDUCATIONAL DISABILITIES IN PLACEMENTS FOR WHICH DCYF HAS FINANCIAL RESPONSIBILITY

Ed 1137.01 DEFINITIONS

(a) "DCYF" means the New Hampshire Department of Health and Human Services, Division for Children, Youth and Families.

(b) "Children in placement for which DCYF has financial responsibility," as used in this part, means all children receiving special education or special education and educationally related services whose placements were made pursuant to RSA 169-B, RSA 169-C or RSA 169-D, except children at the Philbrook Center while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

(c) "Financially responsible school district" means the school district in which a child most recently resided other than in a home for children, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "financially responsible school district" means the school district in which the parent resides.

(d) "Legal custody" means those rights and responsibilities as specified in RSA 169-C:3, XVII.

(e) "Legal supervision" means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order.

Ed 1137.02 APPLICATION AND CRITERIA FOR FINANCIAL ASSISTANCE

(a) Local school districts may make application to the New Hampshire Department of Education for financial assistance for students with educational disabilities in placement for which DCYF has financial responsibility.

(b) Applications for such financial assistance shall be made within 30 days from the date the local school district's financial liability commences as specified in Ed 1137.04(b) and shall be made on forms provided by the Department of Education as described in Ed 1137.05.

(c) A school district shall receive financial assistance under this program when:

(1) The school district shall furnish the New Hampshire Department of Education with written evidence that the child is in placement for which DCYF has financial responsibility;

(2) The student shall be identified as a student with educational disabilities in accordance with the requirements of Part Ed 1107;

(3) The student shall have an individualized education program for the placement as required in Part Ed 1109; and

(4) The student shall have been placed at a private school for the current school year as evidenced by information supplied by the financially responsible school district or districts and maintained in SPEDIS pursuant to Ed 1105.01(a).

Ed 1137.03 LIMITATIONS AND FINANCIAL LIABILITY

(a) A school district's liability for expenses for special education and educationally related services for a student with educational disabilities in placement for which DCYF has financial responsibility shall be limited as stated in RSA 186-C:19-b II, namely, "to 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution" or actual costs, which ever is less.

(b) A school district's liability shall begin when the student with an educational disability is placed in a placement for which DCYF has financial responsibility.

(c) The New Hampshire Department of Education's financial liability for the cost of a student with educational disabilities in placement for which DCYF has financial responsibility shall be limited to the difference between 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution paid to the private provider by the liable school district or districts and the total approved special education or special education and educationally related service costs for that provider as set for that private provider of special education services pursuant to Part Ed 1134.

(d) In those instances where approved special education or special education and educationally related service figures are not delineated separately from other costs, the liability of the New Hampshire Department of Education for said costs shall be limited to the difference between 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution paid to the private provider and 50% of the total approved costs for that provider as set for that private provider of special education services pursuant to Part Ed 1134.

Ed 1137.04 FILING FORMS

(a) Within 30 days from the date a local school district's financial liability commences as specified in Ed 1137.03(b), the financially responsible school district shall file the "Liability for Students with Educational Disabilities in Certain Court Ordered Placements Application" form.

(b) The information on the form titled "Liability for Students with Educational Disabilities in Certain Court Ordered Placements Application" shall include:

(1) The name of the financially responsible district and school administrative unit;

(2) Whether the submission is initial, revised or final;

(3) The name and telephone number of the person completing form;

(4) The student's name and SPEDIS number;

(5) The name and address of the placement;

(6) The placement agency's telephone number and the name of the placement agency contact person;

(7) The beginning and ending dates of the student's placement;

(8) A listing of the student's special education program, necessary educationally related services, their individual approved costs, and total placement costs; and

(9) The date when the school district made final payment to provider and the total actual expenditure for the placement.

(c) After the "Liability for Students with Educational Disabilities in Certain Court Ordered Placements Application" form has been received and reviewed by the Department of Education, the Department of Education shall ask for further valuative or programmatic information, if it is necessary, in order to clarify any of the information requested in (1) - (9) above.

(d) Within 30 days from the date that the financially responsible school district has fulfilled liability for this placement, it shall file a revised "Liability for Students with Educational Disabilities in Certain Court Ordered Placements Application" form certifying to the New Hampshire Department of Education that its financial liability has been paid in full.